HUMAN RIGHTS SITUATION IN BELARUS IN 2009

Analytical Review

Minsk 2010

HUMAN RIGHTS SITUATION
IN BELARUS IN 2009

Analytical Review

Authors: Ales Bialiatski
Tatsiana Reviaka
Valiantsin Stefanovich
Yury Chavusau

Editors: Ales Bialiatski
Tatsiana Reviaka

The review presents an analysis of the state of human rights and fundamental freedoms in Belarus in 2009. It covers both the most flagrant and the most typical violations of citizens' rights over the period.

The review was prepared on the basis of personal complaints by the victims of human rights violations, facts documented by human rights groups, as well as information from public sources (www.spring96.org, www.baj.by, www.nn.by and others.)

The book uses photos from the web-sites www.spring96.org, www.photo.bymedia.net, www.nn.by, www.svaboda.org, www.charter97.org.

ISN 376-8-240057-22-9

Preface

The situation regarding the furtherance of human rights in Belarus remained extremely ambiguous throughout 2009 and thus this period may be described as a time of unrealized hopes.

In 2009 foreign policy was the factor that had the greatest impact on human rights in Belarus. The authorities clearly chose a policy of formally reducing the number of repressive acts, as this was necessary in order to improve Belarus' international reputation. They also wished to enhance their level of political and economic contact with the European Union and the United States, as well as participate in new EU programs (in particular the Eastern Partnership) and take part in a dialogue on human rights issues. This year saw a breakthrough in the political isolation of the Belarusian authorities: for the first time in many years, Belarus was visited by the Italian Prime-Minister Silvio Berlusconi, a key European leader, as well as by a number of high-ranking European officials including the Secretary General of the EU Council Javier Solana, the EU Commissioner Benita Ferrero-Waldner, the Spanish Foreign Minister Miguel Angel Moratinos, the Czech Foreign Minister Karel Schwarzenberg, the Slovenian Foreign Minister Samuel Zbogar, the Slovakian Foreign Minister, Miroslav Lajcak. Lukashenko himself was invited to Lithuania, the Ukraine, Italy and the Vatican.

Belarusian foreign policy remained solely in the hands of Aleksandr Lukashenko. The economic crisis made relations with other European countries more important, as they continued to finance the loans handed to Belarus through the IMF. For a long time, the Belarusian authorities ignored the criticisms of European countries on human rights and on the lack of democracy in Belarus. This obstructionist stance may be attributed to Russia's extensive economic support of Belarus and the subsequent lack of significant leverage of other European countries over the Belarusian regime; however, in the last two or three years Russia's economic support has declined rapidly and in order to preserve the very dubious 'Belarusian model of development' the regime appears to have sought Western finance. This has dramatically increased the importance of economic relations with European democracies.

The economic situation forced the Belarusian regime to seek allies, where before they had seen only enemies. After the Orange Revolution, relations between the Ukrainian and Belarusian administrations were minimized and the Belarusian state media provided negative coverage of Ukrainian political and economic reforms. Moreover, the Belarusian regime intensified its efforts to further restrict democratic freedoms in order to prevent the development of a scenario similar to the one that had occurred in the Ukraine; however, in recent years, neighboring Ukraine, which occupies a much more independent stance in its relations with Russia, has been treated by Lukashenko as a possible strategic partner for joint political and economic projects. On 20 January, during a meeting with the Ukrainian President Viktor Yushchenko, Aleksandr Lukashenko thanked him 'for the tremendous support he provided at various levels in meetings with the Europeans and Americans. The fact that a dialogue between Belarus and the West has finally been established is to your credit too.' He noted that both sides were able to propose 'a number of projects that would be of interest to Europe ...' and that 'There are already over a dozen such projects.'

In February 2009, Belarus was visited by the Secretary-General of the EU Council Javier Solana. During his meeting with the Belarusian President, Aleksandr Lukashenko outlined how he foresaw future relations between Belarus and the EU: 'A dialogue in the form of trade is inevitable; however in politics it is undesirable. Neither is it necessary.' He was probably hinting at the EU's mandatory conditions on an improvement in the situation concerning human rights and democracy before the establishment of closer economic ties with Belarus. Also, Lukashenko suggested 'that in our relationship, we have tried to exclude all those who treat our country in an unfriendly manner. Both those inside our country and abroad. There are a lot of them.' On 17 March in an emotional speech, Lukashenko explained whom he had had in mind: 'If we published everything about how the opposition works in Brussels, Strasbourg and other European capitals as well as in America, then you would be appalled ... as soon as we tried to come to an agreement with the Europeans and the process began to move in the right direction, they became hysterical ... They were either drunk or stoned and it all started pouring forth: out of their ears and other places, out of all their orifices... Some of the great figures we have released from prison have been squealing about what should be demanded from the authorities, from Belarus, badgering and stifling us at this time of crisis... The damage they wish to do to our state is terrible.'

At the same time the Belarusian authorities who have traditionally been friendly towards Russia substituted their inherent Euroscepticism with a different kind of rhetoric. Lukashenko's regular statements that 'Russia is our traditional ally and we will never leave Russia' were accompanied by other pronouncements, such as: 'Belarus is a European country and we do not need to prove it', 'Belarus pursues a sincere policy in relation to the EU', 'Being located in the heart of Europe, we would like to have very good relations with our neighbor — the European Union' and so on.

In 2009, for the first time in many years, the Belarusian authorities demonstrated a clear desire to join European structures. Again, these changes are best explained by the desire of the Belarusian authorities to improve the image of their country abroad in order to enhance their economic relations with the EU. They are specifically concerned by the Eastern partnership, EU's program of cooperation with six post-Soviet countries (Moldova, the Ukraine, Georgia, Armenia, Belarus and Azerbaijan), as well as the EU's human rights dialogue with Belarus and also the repeated attempts to restore Belarus' Special Guest status in the Council of Europe.

Belarus and the Eastern Partnership

Belarus' participation in the Eastern Partnership program was conditional on a number of democratic reforms. In early January 2009 the European Parliament adopted a resolution on Belarus, which stated that 'for a significant improvement of relations with the EU' Belarus should: 1. be a country without political prisoners, 2. guarantee the freedom of the media, 3. continue cooperating with the OSCE on reforming electoral laws 4. improve working conditions for non-governmental organizations 5. guarantee freedom of assembly and political association.

These were the requirements made by the EU when considering Belarus' possible participation in the Eastern Partnership. In January 2009, the EU Commissioner Benita Ferrero-Waldner explained that 'the Eastern Partnership is our proposal to six countries in the East. Belarus is not included here, because in reality there are many obstacles caused by its democratic system. For the five remaining countries this is a valid proposal, but only after they have fulfilled the conditions we demand of them: this means they are not to violate the freedom of the media, nor among many other things the freedom of assembly. After-

ward, we will be ready to take the next step. And the next step is an opportunity for each of these countries to sign an association agreement with the European Union.' In another interview, Benita Ferrero-Waldner spoke about future economic prospects: 'Once your country joins the WTO (World Trade Organization), we will sign various agreements on the establishment of a free trade zone between the WTO and the EU. We want there to be a real economic community between us and our neighbors.'

In early March Benita Ferrero-Waldner again explained the EU's position on Belarus' participation in the Eastern Partnership program: 'We have offered Belarus the opportunity to take part, but in order for this to occur a number of conditions must be met. Firstly — the continuation of democratic reform. We see that certain changes are taking place; political prisoners have been released. But we must be careful. We must be sure that the changes have taken root, that these are not just cosmetic steps or steps that have been taken only on paper.'

In late February, the Chairperson of the European Parliament's Delegation for Relations with Belarus Jacek Protasiewicz said that there were different options including the accession or non-accession of Belarus to the Eastern Partnership. The issues' resolution was largely dependent on Belarus itself, said Mr. Protasiewicz. On 4 March doubts about Belarus' participation in the 'Eastern Partnership' were expressed by the Deputy Foreign Minister of Germany for European Affairs Gunter Gloser.

These uncertainties expressed by European politicians are not unreasonable, since there is little evidence of a serious desire on the part of the Belarusian authorities to start the process of liberalization in the country. In January, a number of youth leaders were conscripted into the army due to politically motivated reasons. They included Franak Viachorka — Chairperson of the *BPF Youth,* Ivan Shyla — Deputy Chairperson of the *Young Front* and one of the leaders of the YF Zmitser Fedaruk. All of them had serious medical grounds for the deferment of their military service, however they were forcibly drafted in a flagrantly illegal manner. In February, two peaceful rallies were violently dispersed in Minsk: on 14 February — St. Valentine's Day and 16 February — Solidarity Day. Nobody participating was convicted, though many were severely beaten during the course of their arrest and later had to seek medical help. On 8 February three activists of the entrepreneurs' movement Mikalai Autukhovich, Uladzimir Asipenka and Yury Liavonau were

arrested on spurious grounds in Vaukavysk. On 12 February, a youth activist Artsiom Dubski (convicted in 'the case of 14' for participating in a peaceful protest rally of entrepreneurs in 2008) was taken into custody and on 23 February Maksim Dashuk, who had been convicted in the same trial, was charged with evading his sentence; the rights of all the others convicted in 'the trial of 14' remained restricted. The founders of the Belarusian Christian Democracy Party were placed under pressure from the KGB and the authorities, when submitting the documents necessary to register their party. Across the country, peaceful public events were arbitrarily banned; civil activists were detained without charge for participating in unauthorized rallies in Minsk, Vitsebsk, Mahiliou, Baranavichy and dozens were fined in Minsk and Homel. The UCP Chairperson Anatol Liabedzka was still subject to an unexplained travel ban, Belarusian border guards conducted luggage searches of the human rights activists Ales Bialiatski and Valiantsin Stefanovich. In early March Agnieszka Komarowska, program coordinator at Stefan Batory Foundation and David Hamilton, head of the National Democratic Institute in the Ukraine, were refused entry into Belarus.

In January the Belarusian authorities set up the Public Advisory Council at the Presidential Administration, the Public Mass Media Coordination Council and the Inter-agency Working Group in order to plan the country's marketing strategy with the participation of representatives of the civil society. However, overall control of both public and political processes remained solely in the hands of the authorities.

In this period, Jacek Protasiewicz, head of the European Parliament Delegation for Relations with Belarus strongly condemned the forced enlistment of youth activists in his assessment of the human rights situation in Belarus. The US Secretary of State Hillary Clinton also expressed her extreme disappointment with the lack of visible progress in human rights. In early March the US Charge d'Affaires Jonathan Moore said: 'The fact that two former political prisoners — Autukhovich and Liavonau — are once again under investigation is really disappointing. Also, we do not understand why peaceful demonstrations were dispersed in February. And, of course, for the United States the fate of American citizen Emanuel Zeltser, who for almost a year has been in prison in Belarus, is still an unresolved question. We are very concerned with his state of health, we have repeatedly urged the Belarusian authorities to release Mr. Zeltser on humanitarian grounds, but this was not done.'

It seemed that there was less and less chance of Belarus' accession into the *Eastern Partnership*, but, in our opinion, this was due to two determining factors.

Firstly, despite the fact that the Belarusian authorities have not yet, as expected, begun transparent reforms of social and political life, European politicians still hope that the involvement of the Belarusian authorities in European programs will hasten this process. Most Belarusian non-governmental organizations and political parties also support the inclusion of Belarus in the program for the same reasons.

Secondly, The Russian government's insistence that Belarus recognize the states of Abkhazia and South Ossetia adversely affected the EU's decision. At the beginning of the year in an interview with the *Komsomolskaya Pravda* newspaper, the South Ossetian President Eduard Kokoity said, 'Lukashenko says, «I will keep my word. In the near future, we will certainly recognize you.» We — I Bagapsh and Lukaszenko — met informally at the funeral of Alexiy II.' But these steps by the Belarusian authorities towards the recognition of Abkhazia and South Ossetia have not gone unnoticed by European politicians either. Benita Ferrero-Waldner said, 'Our position with regard to South Ossetia and Abkhazia is known and constant — we do not recognize the independence of these countries. When Belarus recognizes their independence, it will ruin our relationship and will slow down all our harmonization initiatives.' On 23 February, 2009, at a meeting of the EU Council, Karel Schwarzenberg stated that the recognition of Abkhazia and South Ossetia by the Belarusian Parliament would complicate Belarus' participation in the Eastern Partnership. On 16 March, Javier Solana also confirmed that 'in future relations between Belarus and the EU, it will be important how the issue of Minsk's recognition of South Ossetia and Abkhazia is going to be solved. Otherwise, relations between the organization and Minsk will be reviewed.' The recognition of Abkhazia and South Ossetia has not yet occurred. Aleksandr Lukashenko promised that the decision would be made later by the new Parliament.

As for Russia, it disliked the rapprochement between the six former Soviet states and the EU and worried that their accession into the Eastern Partnership would make them more independent, question Russia's current and former geopolitical activities in the post-Soviet area and possibly lead the six countries to drift away from their former parent state. In an interview in the newspaper *Zavtra* Aleksandr Lukashenko said: 'It must be admitted that the Russian government has serious

reservations regarding the Eastern Partnership. I have often discussed this issue with Dmitry Anatolyevich Medvedev. It seems to me you do not understand what the Eastern Partnership is about. You consider it to be an anti-Russian initiative of the West. Maybe there is such a plot. But I am telling you that today we do 47% of our trade with the European Union and the balance is in our favor... The Eastern Partnership promises us 'a free trade zone' in the long term and for us this is a huge benefit. It will give us the opportunity to borrow from the banks, from which you borrow. And we have already received a loan from the IMF, which is several times larger than the credit granted to us by our brotherly Russia.' These statements clearly show that the EU's initiative is viewed as a real chance to raise trade and economic relations with the EU to a higher level, for the sake of which the Belarusian authorities were even prepared to break previous promises.

On 20 March the European Union included Belarus in the Eastern Partnership. However, Lukashenko was not welcome at the summit in Prague on 7 May, where the documents of inauguration were signed. Although he was sent an official invitation, a number of negative comments were made by some politicians, including the Czech President Vaclav Klaus and the Dutch Foreign Minister Maxime Verhagen, who said that 'if the countries of the Eastern Partnership want full relations with the EU, they then should respect our values, democracy and human rights'. As a result, Belarus sent Siarhei Martynau, the Foreign Minister, as their representative to Prague. The joint Prague summit Declaration stated that the Eastern Partnership would be based on 'commitments to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms.' It was also declared that Belarus' level of participation in the Eastern Partnership would be dependent on the progress it made in its democratic reforms. In particular, Ms. Ferrero-Waldner noted that 'if Belarus opts for reforms and greater openness, the EU is ready to respond positively and help Belarus wherever possible.'

In July, speaking at a meeting with the heads of the Belarusian diplomatic missions, Aleksandr Lukashenko, in his turn, specified the country's place in the program: 'Belarus joins the Eastern Partnership as a full member, not as a petitioner. The extent of our participation and the terms of our presence in the program will be determined on the basis of national interests and not on the basis of gratitude for being invited

there... Democracy in Belarus is no less developed than in neighboring countries. It is the democracy that is needed on a daily basis by the ordinary man and his family and not just babble at the expense of foreign sponsors.'

The consequences of the first meeting of the Civil Society Forum, held in November in Brussels resulted in a grave setback to the further development of the Eastern Partnership's cooperation with the Belarusian authorities. The Forum was set up during the inauguration of the program in the spring in Prague, as a permanent institution to embody civil participation in the program. The Swedish Foreign Minister Carl Bildt, speaking at the Forum, once again assured the participants that cooperation with the countries of the Eastern Partnership would be established on both an interstate level and at the level of civil society. Representatives from 27 Belarusian organizations were invited to the Forum and shortly after their return to Belarus one of the participants, Tatsiana Shaputska, a student with good grades from the Belarusian State University, who represented the *Young Front* movement was expelled from the law faculty of the University for participating in the event. This expulsion dismayed many European politicians.

The EU-Belarus Human Rights Dialogue

The European Parliament's resolution of 2 April expressed concern about human rights in Belarus. They highlighted the issues they deemed necessary to be resolved by the Belarusian government within 9 months of sanctions being suspended. Hope was expressed that a dialogue on human rights between the EU and Belarus would commence in the near future.

The start of the dialogue was announced by the EU Council of Ministers of Justice on 6 April. Agreement with Belarus was reached on this issue during Javier Solana's meeting with Aleksandr Lukashenko and the Foreign Minister Siarhei Martynau in Minsk on 19 February. The EU Council stated that 'the purpose of this dialogue, on the one hand, is to discuss human rights issues in Belarus and the countries of the EU and on the other, to discuss issues of common interest to both sides and expand the discussion on human rights in a multilateral collective body.'

Before the dialogue Belarusian diplomats consulted with the Russian Foreign Ministry on how they conducted a similar dialogue between the EU and Russia. Czech diplomats, who organized the dialogue on behalf of the EU, met in turn with representatives of non-governmental organizations and democratic opposition parties in Minsk. Since there is no civil participation in this dialogue, we can only learn about it through the official press release of the European Commission to Belarus, which reads, 'On 16-17 June in Prague, the European Union and Belarus conducted the first round of dialogue on human rights... At the meeting the parties had the opportunity to exchange views on the human rights situation in Belarus and the EU. In particular, the parties focused on the issues of freedom of assembly and association, discussed labor legislation, freedom of expression and information, freedom of thought, conscience and faith, counteracting various forms of intolerance and hate crimes, the rights of migrants and minorities, combating trafficking in persons, the protection of various disadvantaged groups, the situation in prisons and correctional institutions, as well as the death penalty.' According to this press release, 'the parties also discussed prospects of restoring Belarus' relations with the Council of Europe.' The parties in the dialogue agreed that such meetings would be held at least once a year.

As yet, it is impossible to speak of there being clear and early results to the dialogue, which is in reality a form of exchanging views, thoughts and concerns, rather than of making specific findings and taking measures. Nevertheless, it is obvious that the Belarusian government once again received clear signals that human rights violations in Belarus are of great concern to the international community.

Belarus and the Council of Europe

Back in April 2009 at the session of the Council of Europe, the CE Secretary General Terry Davis spoke in favor of continuing the dialogue with the government of Belarus and welcomed the EU's steps in this direction. A great deal of progress was made on the issue of restoring relations between Belarus and the Council of Europe in May and June. On 26 May the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, after hearing the report of the PACE's Special Rapporteur on Belarus Andrea Rigoni, voted to restore the Belarusian Parliament's Special Guest status. The report prepared by Mr. Rigoni stated 'We ask the Belarusian authorities to take the following steps towards democratization of the country' and then made a number of clear criteria, including freedom to register political associ-

ations and movements, freedom of the media, freedom of expression, as well as a moratorium on the death penalty and the revision of electoral legislation. Mr. Rigoni explained that 'this whole process is subject to verification' to be implemented by the PACE subcommittee on Belarus with the participation of representatives of the Belarusian Parliament and civil society. 'My report sets a period of one year in order to verify the implementation of these steps', noted the Rapporteur.

On 8 June, Minsk was visited by Samuel Zbogar, the Minister of Foreign Affairs of Slovenia. Because Slovenia chaired the Committee of Ministers from May to November, he was also the Chair of the CE Committee of Ministers. His visit was timed to coincide with the opening of the Information Point of the Council of Europe. During a meeting with the Foreign Minister of Belarus Siarhei Martynau they discussed Belarus' admission into the Council of Europe in the near future and Zbogar said that Slovenia would 'make every effort to realize this goal.' He made reference to the stated opinion of the Ministers of the Council of Europe of the 'great progress in Belarus in the fields of democracy and respect for human rights.' Mr. Martynau, in response, said that 'the situation in the fields of democracy and human rights in Belarus is no worse than that in neighboring countries and EU states.' The importance of restoring contact with the Council of Europe for the Belarusian authorities was reflected in the fact that on the same day, Mr. Zbogar was received by Aleksandr Lukashenko. During this meeting, President Lukashenko said: 'You can be absolutely confident that everything that happens in relations with our Western partner — the European Union — is not a one-off event on our part, not a game — it is the implementation of our longstanding strategic policy.'

Developments were such that the restoration of the Belarusian Parliament's Special Guest status in PACE looked almost certain. On 23 June, speaking at a session of the Parliamentary Assembly of the Council of Europe, Andrea Rigoni outlined the positive steps taken by the Belarusian authorities in the field of democracy and human rights and noted that the policy of isolating the Belarusian authorities had not been fruitful. He called for this issue to be resolved in a manner favorable to Belarus. Unexpectedly, however, both for the Belarusian official delegation and for foreign advocates of this policy, deputy Christos Pourgourides, former PACE Rapporteur on Belarus and the author of a report on political disappearances in Belarus, suggested that the Belarusian parliament's Special Guest status should only be restored after the

declaration of a moratorium on the death penalty. Valery Ivanou, the Deputy Chairperson of the House of Representatives, who represented the Parliament of Belarus at the PACE session, tried to salvage the situation, by noting that the 'abolition of a moratorium is a condition for accession to the organization and not for granting Special Guest status.' However, the inclusion of an amendment requiring a moratorium on the death penalty was approved by PACE. In their resolution, MPs also called upon the Belarusian authorities to release all political prisoners, stop the persecution of opposition activists and their forced military recruitment, remove obstacles to the registration of public associations, initiate reforms of electoral legislation, permit independent media to operate freely and allow the authorization of peaceful protests.

The Belarusian authorities did not forgive Mr. Pourgourides for thwarting their political aspirations and he was denied a visa to Belarus in November 2009 ahead of his expected participation in the Belarusian European Forum.

Belarus and Russia

Belarus pursued a policy of close contact with the West; however, its success was dependent on the democratization of the Belarusian regime and respect for human rights. At the same time the Belarusian authorities were no less active in their diplomacy with the Russian Federation. In these relations they were mainly concerned with solving economic disputes and the lifting of sanctions that had been levied by both sides. Although the leaders of the two countries never raised the issues of democracy or human rights, the relationship is of interest to us because of its geopolitical nature and how the Belarusian authorities have as a result turned towards the EU.

Back in April, Aleksandr Lukashenko said that Russia 'has a more dishonest attitude towards us.' He urged the Belarusian government 'to stop groveling in their offices... If they do not want to let us into their markets, we need to find other ways to export. Life forces us to go to other markets.' On 29 May the orders were repeated. The next day, after a meeting with Vladimir Putin, Aleksandr Lukashenko said: 'Different times are coming. No luck in Russia; do not cringe, do not whine and cry. You must seek your happiness in another corner of the globe. I am saying this publicly and consciously.' There were difficulties in obtaining part of the loan, promised by the Russian government. In reply to

the comments of Minister Kudrin, Russia's Vice-Premier and Finance Minister, on the state of the Belarusian economy, Aleksandr Lukashenko reacted angrily, 'He's gone into league with the gangsters in our country and is telling us what to do.'

In early June, Russia placed import restrictions on Belarusian milk, since, according to the governor of the Belgorod oblast of Russia, they were witnessing 'the destruction of our dairy industry'. The conflict that followed was labeled the 'milk war' by the press. On 14 June the Belarusian authorities announced that they would not send a delegation to a Collective Security Treaty Organization (CSTO) meeting. Aleksandr Lukashenko's press service said: 'Economics is the basis of our common security. But if Belarus' closest CSTO ally tries — being well aware of what it is doing — to destroy this foundation, virtually forcing the Belarusians to their knees, how is it possible to speak in such a situation about strengthening the collective security of the entire Organization?' Moreover, the State Secretariat of the Security Council of Belarus was ordered 'due to the unfriendly actions of Russia... 'to take the necessary measures to predict any further possible actions designed to cause economic loss to our country.' The CSTO summit in Moscow, where an agreement on collective rapid reaction forces was signed, was held without Belarus. At a meeting of the Presidium of the Government of Russia the country's Vice Prime Minister Sergei Sobyanin said that the Belarusian authorities 'tend to over-politicize issues and make very improper statements, which overall complicate negotiations.' This was commented upon by the Prime Minister of Russia Vladimir Putin, 'Improper — it is certainly not a good situation, but there is no need for us to take offense. It's all due to crisis, fatigue and stress...'.

Belarus and the European Union

Immediately after the worsening of Belarusian-Russian relations Benita Ferrero-Waldner, the EU Commissioner for External Affairs was sent an invitation to visit Minsk in June 2009. As she told reporters, 'the Belarusian President himself told me to come as soon as possible.' During her visit, Ms. Benita Ferrero-Waldner repeated the EU's demands of the Belarusian authorities that had been made before: 'We have clearly set out what needs to be done. You have to do much more and Belarus has before it a different path. We want to see more progress in several areas. There needs to be more respect for the freedom of the press. The registration of nongovernmental organizations should be much easier and they should be allowed to work without interference. There needs to be more respect for the freedom of expression and people should be able to express their views without harassment or arrest. Belarus also needs to release all its political prisoners. We sincerely want to see Belarus as a full partner in the EU's Neighborhood Policy and the Eastern Partnership.'

In July, negotiations were held in Brussels between Siarhei Martynau, the Belarusian Minister of Foreign Affairs and high-ranking EU officials, including Carl Bildt, the Swedish Foreign Minister, Javier Solana, the High Representative for the Common Foreign and Security Policy and Benita Ferrero- Waldner, the EU Commissioner for External Affairs. Comments made after the meeting show that the Europeans were overall dissatisfied at the pace of reforms in Belarus, which they had expected of Belarus after its accession into the EU's Eastern Partnership program. Benita Ferrero-Waldner stated that in their relations the EU and Belarus had 'reached a crossroads' and that it was in the common interest that a new kick-start be given to the reforms.' Carl Bildt, who represented the EU's presiding state (Sweden), said that during the meeting the parties had openly discussed the political situation, which did 'not meet the expectations of the EU.' Human rights were also on the agenda, such as, 'restrictions on political freedoms, the problems with the registration and operation of civil society organizations and political parties, as well as the use of the death penalty in Belarus.'

Siarhei Martynau, in his interview with the press agency, *Agence Europe*, stressed again that the Belarusian government saw cooperation with the EU only in the economic sphere: 'We pay attention to what the EU expects from its partners. As we understand, first of all it is stability and economic prosperity — it is these criteria that the Eastern Partnership initiative is based on.' He also spoke about the EU's human rights requirements: 'It is important to bear in mind that when talking about improvements, we believe that improvements are not changes made under pressure or the strict supervision of the EU, but are reforms in our society from which we ourselves will benefit.'

Lukashenko, in turn, perceived such changes in the country's foreign policy as a real threat to his unlimited rule. In August 2009, he spoke on this subject: 'I will say about one issue. If conditions are imposed upon us and it is expected that Lukashenko has no way out, as once

Russia used to think that they had bad relations with Russia [sic], it does not work... We have good relations with Russia, we have excellent relations with Russia ... If someone in the West thinks that our relations with Russia have soured and we will tame Lukashenko and he will release all criminals who break the law from prison, they are mistaken!... If the West hopes that by their actions, or some fraud power can be taken away from the current government and passed to the opposition, they are wrong.. I want the Europeans to conduct a sincere, decent and honest dialogue and not to attempt to ride roughshod over us and break us.' As a result, despite repeated promises at international meetings to show more respect for human rights in Belarus, no real changes have occurred.

On 16 December the European Parliament hosted a debate on the situation in Belarus, during which Karel de Gucht, the European Commissioner for Development and Humanitarian Aid, said that if Belarus initiated significant and irreversible steps to further democratization, human rights and the rule of law, then the EU would include them in the European Neighborhood Policy and work closer with them. The Benita Ferrero-Waldner, EU External Affairs Commissioner, said that the EU Council had requested the EU Commission to develop an interim plan to cooperate with Belarus within the European Neighborhood Policy. According to her, this plan will be drawn up in collaboration with the authorities and civil organizations in Belarus. It will also help start up a dialogue on political issues. Ms. Benita Ferrero-Waldner said, 'Respect for rights and freedoms in Belarus should become a standard.' On 17 December the European Parliament adopted another resolution on human rights and freedoms in Belarus, which expressed deep regret that a number of positive steps undertaken by the Belarusian authorities had not been followed by any substantial progress in human rights or freedoms.

The Belarusian authorities and civil society

The change in the geopolitical situation forced the Belarusian authorities to change their tactics in regards to civil society. 2009 was marked by the formal reduction of repressive acts; however the authorities failed to put an end to this shameful policy.

Some 70 participants of peaceful rallies were arrested in Minsk, Baranavichy and Vitsebsk on Solidarity Day (16 July) alone. Many of these arrestees were beaten by the militia. On 7 July, Asipovichy District Court sentenced a Young Front activist who had been tried in 'the trial of 14' to one year in prison for violating the rules of his sentence. In June and July, in a clear challenge to the international community, two new death sentences were passed. The General Prosecutor's Office issued numerous warnings to civil activists for acting illegally on behalf of unregistered organizations. Such a warning was issued in August to Mikhail Ilyin, a *Young Front* activist from Brest and in December a warning was issued to his fellow party member Yulia Pashko. In June, Yauhen Volkau, a member of the unregistered religious organization *Unification Church* (The Moonies), faced the same charges under article 193.1 of the Criminal Code.

The authorities continued to harass activists from the Polish minority. On 23 June on the Hrodna-Minsk highway the militia detained Mieczyslaw Yaskevicz, the Deputy Chairperson of the unrecognized Union of Poles in Belarus (UPB), as well as Igor Bantser, the UPB Press Secretary, Andrzej Pisalnik a *RzeczPospolita* journalist and Andrzej Poczobut a *Gazeta Wyborcza* journalist. They spent three hours in Shchuchyn militia station where the militia confiscated issues of the newspaper *Glos znad Niemna na uchodzstwie* and the magazine *Magazyn Polski* issued by the UPB. The militia explained that they had been detained for allegedly transporting anti-state periodicals. In August Mr. Pisalnik received a warning from the Hrodna region Prosecutor for transporting unregistered publications that were found in the journalist's car.

The Ministry of Justice repeatedly refused to register new political parties and public organizations, such as the Party of Belarusian Christian Democracy, the Freedom and Progress Party, the Belarusian Party of Workers and human rights organizations such as *Nasha Viasna, Berastseiskaya Viasna*, the *Young Democrats* youth organization and others.

There are still several foreign nationals who, being out of favor with the Belarusian authorities, are refused entry into Belarus. In August 2009 the Belarusian Consulate in Paris refused a visa to Souhayr Belhassen, the President of the International Federation of Human Rights (FIDH). During her visit to Minsk Ms. Belhassen was expected to meet with prominent civil leaders and to take part in *Nasha Viasna*'s appeal against its denial of state registration in the Supreme Court.

Members of various religious faiths continued to be prosecuted by the courts. On 14 July, Judge Aksana Sarakhman of the Baranavichy

Town and District Court fined the New Generation Protestant church BYR 350,000 for ‘engaging in activities violating the organization’s charter’ and on 12 August Judge Vital Kozyrau of the Homel Chyhunachny Court fined Yury Rashetnikau, the head of the Jehovah’s Witnesses religious community, BYR 1,050,000 for arranging a religious meeting that was considered by the court to be in breach of the mass event protocols.

There were recorded seizures of printed matter and warnings to journalists working without accreditation from prosecutors. On 14 July, the Minsk Prosecutor issued warnings for ‘illegal journalistic activity’ to Aksana and Alexander Kalinkins,members of the Belarusian Association of Journalists (BAJ) for working with the Russian Good News Channel (TBN). On 29 July, the Hrodna Region prosecutor’s office issued an official warning to Igor Bantsar, the editor of *Magazyn Polski* since the magazine of the unrecognized Union of Poles did not print the mandatory technical and circulation data. On 21 August, Volha Sharapkina a BAJ member from Mahiliou, received a warning from the Chavusy prosecutor’s office for working without accreditation following a television report on the Chavusy orphanage that was broadcast by *BelSat,* an independent TV channel.

On 1 September, summing up the state of democracy in Belarus, Nigel Gould-Davies, the British ambassador to Belarus said, ‘The EU hoped for a steady movement in its relations with Belarus, but I must say that the pace has slowed down... The EU is ready to continue expanding its cooperation but expects certain efforts in return.’

However, the Belarusian authorities were reluctant to make changes. On 9 September a peaceful protest, ’West 2009’, against Russian troops arriving in Belarus for joint Belarusian-Russian military exercises was violently dispersed in Minsk. The militia arrested about 30 people, 17 of whom had civil charges brought against them and were fined. The detentions were accompanied by the use of physical force, foul language and journalists were prevented from filming the dispersal. After the arrest the detainees were taken to the Centralny militia station where they were forced to stand against a wall for four hours and some were badly beaten. It is obvious that the crackdown on the peaceful protest was meant to show Russia that the Belarusian authorities could keep the situation in the country under control and would not allow democratic opposition to question the joint Russian-Belarusian military operations. After the exercises Lukashenko said: ‘We neither conducted

the exercises with the Americans nor with NATO, but with our Russians. So only an idiot could now say that Lukashenko has turned to the West or elsewhere and abandoned Russia.’

On 16 September, on the 10th anniversary of the disappearance of the opposition politician Viktar Hanchar and the businessman Anatol Krasouski, the militia again broke up a peaceful rally. Over twenty people were detained in Minsk, plain-clothed militiamen did not allow photo and TV reporters to record the event. During the arrest the militia severely beat protesters and insulted them. All the detainees were taken to the militia station and later released without charge. At the same time, detainees in a protest in Homel were charged with holding an unauthorized mass event (Article 23.34 of the Civil Code). They were later convicted and fined.

On 17 September Sweden, ‘as the presiding country of the European Union, urged the Belarusian authorities to refrain from using violence against peaceful demonstrators and to protect representatives of independent media from interference in their work.’ Nevertheless, on 16 October, on the following Day of Solidarity in Minsk, another peaceful demonstration was broken up, 22 people were arrested, many participants were beaten and journalists were not allowed to cover the event. Thus, the tactic of beating up demonstrators was used by the militia throughout the year, while none of the complaints filed by the beaten demonstrators were given a fair hearing by the prosecutor’s office.

In September, the UN Human Rights Council expressed deep concern over human rights violations in Belarus. Similar remarks were made by delegates participating in the OSCE Human Dimension Implementation Meeting in October. On 28 October, the U.S. Assistant Secretary for European and Eurasian Affairs described the steps that the Belarusian authorities had taken in the field of human rights as ‘modest’ and said that they were insufficient for a real warming of relations between the U.S. and Belarus.

President Lukashenko, in turn, said in October that the Europeans ‘must understand that we can only accept those terms and conditions that do not go against the interests of the people, our neighbors and Europe in general... The decade of sanctions that the EU has used against us has failed to produce results.’

OSCE Office in Minsk

In September 2009 the Head of the OSCE Office in Minsk, Ambassador Hans Jochen Schmidt left Belarus 5 months before the expiry of his term, which was to last until February 2010. Prior to this the central office of the OSCE in Vienna had received several complaints from Belarusian democratic political parties and organizations concerning the actions and statements of the diplomat.

On 27 May Mr. Schmidt, at a meeting with Mr. Liabedzka, the co-chair of the United Democratic Forces (UDF) and the Chairperson of the United Civil Party, said that the OSCE/ODIHR and the Venice Commission would not consider proposals to amend the Electoral Code that had been prepared by democratic parties and NGOs, but instead would only consider those submitted by the authorities. As a result, the Presidium of the UDF applied to the Chairperson of the OSCE and Director of the OSCE/ODIHR for an explanation of this statement.

In June, Mr. Schmidt gave an interview to the *BelaPAN* news agency and made a number of controversial statements. The diplomat said: 'I will maintain the position that only focusing on human rights violations goes against the interests of the OSCE. I am an advocate of a pragmatic approach...'. Commenting on the West's relations with Belarus, Mr. Schmidt said: 'We are receiving feedback from the West and there is now an understanding that it is time to abandon our futile policy of isolation that we have adhered to for twelve years... In recent months, our office has received a great amount of support and understanding in Belarus — both from government agencies and some public organizations.'

In June, the Head of the OSCE Office invited Professor Martin Fink, a German specialist in criminal law procedures, to Minsk. He was given access to materials concerning the political prosecution of Mikalai Autukhovich, Yury Liavonau and Uladzimir Asipenka, the Vaukavysk entrepreneurs. The expert claimed that there had been no legal violations in regard to how the authorities had dealt with these cases. His conclusions, he claimed, were 'based on the opinions of the relevant officials and the case materials.' The expert noted that he had not read the whole case, 'but all that I had wanted to see, I did see.' During his stay in Belarus, the expert neither met with the lawyers of the accused, nor with the accused themselves and information regarding his visit became known only after it was over. Autukhovich's lawyer Pavel Sapelka said that this was 'a flagrant breach of the law': 'Even I, his counsel, have no access to any materials, except those provided by law.'

In August, assessing the work of the OSCE Office in an interview with *Radio Racyja*, the UCP Chairperson Anatol Liabedzka said: 'I regret to note that the OSCE Office has ceased to be the generator of any ideas, initiatives or proposals. Its activities have shrunk to the function of a lobby or adviser to the Belarusian authorities. No more than that... It has ceased to be important. Some small initiatives, some minor complaints. This is what the degeneration of the OSCE Office in Belarus is like.' The politician said that Ambassador Schmidt had almost entirely stopped cooperating with the democratic opposition.

The Head of the Presidential Administration of Belarus Uladzimir Makei, soon after the resignation of H. Schmidt was announced, said that 'the Belarusian side has to think seriously about the future role of the OSCE Office in Minsk, starting with the appointment of its new head.'

On 30 December, at the OSCE Permanent Council session in Vienna, the Belarusian authorities agreed to extend the mandate of the Office for another year, although they stressed that 'there is no objective justification for the presence of the OSCE Office in Minsk.' A statement by the Foreign Ministry specified a number of regulations that would limit the future activities of the office, in particular, it emphasized that all projects and programs of the Office in Belarus should be implemented only after consultation with and the consent of the Belarusian authorities and should always involve them. Projects could not be financed from extra-budgetary funds without the consent of Minsk and there would be no projects that did not meet the needs of Belarus. 'The Office should stop providing assessments and forecasts of the political situation in the country' though it may monitor those spheres, where 'it provides support to the government of Belarus.' Any unauthorized analysis of individual facts or events would be unacceptable. In the case of 'violation by the OSCE Office of its mandate or the continuation of activities that lay outside the previously agreed parameters, the Belarusian party reserve[d] the right to terminate its mission in Belarus.' After consultation with the Belarusian government, Benedikt Haller became the new Head of OSCE Office in Minsk.

Changes to Electoral Law

Reform of electoral legislation was one of the five conditions set out by the EU for its improved relations with Belarus.

Back in January, Minsk was visited by OSCE/ODIHR Director Janez Lenarcic to discuss the recommendations of the OSCE to improve the electoral system in Belarus. The recommendations from the OSCE had previously been submitted after the 2008 parliamentary elections to the Belarusian authorities in the form of the ODIHR final report. During Mr. Lenarcic's visit, he met Siarhei Martynau, the Minister of Foreign Affairs, Mr Makei Head of the Presidential Administration and Ms. Yarmoshyna the Head of the Central Electoral Commission. The final press release was on the whole optimistic: 'The OSCE Office for Democratic Institutions and Human Rights (ODIHR) will work with the Belarusian authorities on reform of the country's electoral system. This agreement was reached during Janez Lenarcic's two-day visit to Minsk.'

As a result a working group was set up in Belarus to improve the electoral law. It was headed by Valery Mitskevich, the Director of the National Center for Law and Legal Studies and deputy chairperson of the CEC. From 10-11 February, the first meeting between the Belarusian representatives of the group and experts from ODIHR was held. In March, Mr Lazavik the Secretary of the CEC said: 'The panel of experts is now working on the comments and suggestions of the OSCE/ODIHR. But the panel itself has no right to make changes or additions to the electoral law. Therefore it deals with legal issues... Afterward the President and Parliament will decide which of the ODIHR proposals to accept and which to leave on a discussion level.' Belarusian democratic parties and non-governmental organizations developed a draft of amendments and supplements to the Electoral Code, which was submitted to both the Belarusian authorities and representatives of the international community.

After that, nothing happened in regards to changes in electoral law. In June Benita Ferrero-Waldner, the EU Comissioner, during her visit to Belarus, said that the EU expected the Belarusian authorities to introduce constructive changes to its electoral law. In June this issue was also raised by Mr Schmidt, the head of the OSCE Office in Minsk, who said that the draft electoral law changes had not yet been submitted to the OSCE, 'We hope that soon we will get the opportunity to analyze and comment on these proposed reforms in consultation with the Venice

Commission. Let's see whether the Belarusian authorities is able to respond adequately to the recommendations of the ODIHR.' The diplomat also said that 'we are ready to organize roundtable talks on this issue with the participation of representatives of state institutions and civil leaders to discuss these problems in a transparent manner.' At the same time Mr Lazavik, the CEC secretary said that the ODIHR proposals had already been submitted 'for consideration firstly by the Presidential Administration as well as by state bodies.'

In September during a meeting in Warsaw, Janez Lenarcic, the head of the OSCE/ODIHR, told Ales Bialiatski, the Chairperson of the Human Rights Center, that discussions with the Belarusian authorities on possible changes to the electoral laws had actually been in deadlock since the spring. In October Mr. Lenarcic repeated the information to A. Liabedzka and S. Bahdankevich, the UCPB leaders.

Talks began to move forward in October, when Aleksandr Lukashenko met Ms. Yarmoshyna, the CEC Chair. She suggested changes to legislation in the form of 'ideas from the Central Commission.' Among those 'ideas' were proposals that would allow the representation of political parties on election commissions and limit the number of government officials. There were also ideas that would simplify the procedures for the nomination of candidates, both those put forward by political parties and those who gained their nomination by collecting the requisite number of signatures; there were ideas that would simplify pre-election meetings with voters and allow for greater judicial protection of electoral rights and there were ideas that would improve the oversight of counting the vote. Aleksandr Lukashenko said of these proposals, 'If we can create the most liberal climate with the help of these laws (which we already have experience of), we'll have to do this together with you. Otherwise we might be criticized for usurping power and others might say that here we have a dictatorship that only holds the kind of elections that it wants. This should not happen, so I am an advocate of the most liberal kind of elections.'

After the meeting, Ms. Yarmoshyna added that 'the changes to the Electoral Code, which are being proposed, are there to correct mistakes. But so far we can only talk about the idea in principle. The bill still needs to be drafted and submitted to Parliament. When it appears, we'll see what is left of the Central Commission's proposals.'

As a result of sudden and unexpected developments, the changes to electoral law were not considered by the Public Advisory Council

(PAC) of the Presidential Administration as had previously been planned. On 12 November the Council head Mr. Makei stated that 'People have tried to attack the PAC before, but ahead of the next meeting on election law they have become particularly brazen. Parts of the media have begun to paint a picture of the Council as being 'useless' and 'inefficient' arguing that all matters relating to electoral legislation reform have already been resolved in a meeting with the President. But everyone who was carefully following the press coverage of that meeting with the President, knows well that only the conceptual and strategic framework of the issue was finalized. The details are yet to be decided upon and will take into account the opinions of the public.' As a result, the head of the PAC decided to 'put the activities of the Public Advisory Council on hold.'

In November, the draft amendments to the electoral legislation were put before the House of Representatives. As chair of the CEC Ms. Yarmoshyna said the changes to the electoral laws took into account 90% of the OSCE recommendations,' and added that 'Observers have the same powers as they did under the previous laws: they have the right to observe the counting of votes. The clause concerning the observance of the vote-counting process has been omitted as it was too subjective.' It was Lukashenko who spoke out against the amendment: 'I do not see any problem here. We have the chairs of the electoral commissions to decide whom to allow to count the votes and whom not to allow,' he said at a meeting before the submission of the bill to Parliament.

On 30 November the House of Representatives passed its first reading of the bill 'On introducing amendments and supplements to some laws of the Republic of Belarus on elections and referenda...'. The draft amendments were not debated at all. They were decided upon behind closed doors so the democratic community had no way of influencing this process.

On the same day, Jens Eshenbeher, the OSCE/ODIHR spokesman, reported that the Belarusian side had not allowed the ODIHR to study the changes to the Electoral Code. The CEC Chair Yarmoshyna confirmed this, 'The draft was not submitted to the OSCE for approval. Is there a single sovereign state that would send its domestic bills for approval to an international organization. It is a humiliation.' Also Yarmoshyna commented on cooperating with civil leaders in Belarus: 'The opposition took no part in the preparation of the new legislation. When I spoke at an online press-conference of the *Sovetskaya Belorussia*

web-site, I did not hear any constructive suggestions from the opposition, only personal insults.'

On 7 December Lukashenko thanked the staff of the CEC 'for their highly professional organization of elections and national referenda, the improvement of the national electoral system, which represents a significant contribution to the democratic foundations that bolster the power of the state.' Let us not forget that the CEC Chair Yarmoshyna remains one of five persons who are prohibited to enter the EU and the United States for the rigging of elections and visa sanctions against her are still valid.

On 11 December the changes to the Electoral Code were passed by the House of Representatives on its second reading, on 17 December they were approved by the Council of the Republic and on 6 January, 2010 the act was signed into law by Lukashenko.

EU Visa Sanctions

High-ranking Belarusian officials (all except 5) had the EU sanctions against them suspended in October 2008 for a six-month period while the situation regarding human rights in Belarus was evaluated.

Due to the lack of real progress towards the democratization of Belarus, on 16 March the Foreign Minister of the EU extended sanctions against Belarusian officials for a year but also extended their suspension for another 9 months. Karel Schwarzenberg, the Czech Foreign Minister said that the decision was symptomatic of 'a difficult situation in Belarus.' At the same time, according to Mr. Schwarzenberg, 'we agreed that the EU should continue its engagement in Belarus and support constructive changes in the country.'

This decision enraged Aleksandr Lukashenko. Speaking on 17 March, he said: 'If the Europeans think that we can be kept on the hook at the behest of the 'thugs' in our society and that they can keep vexing and worrying us over trifles, then we will refuse to conduct a dialogue on their terms.' Aleksandr Lukashenko reiterated his complete unwillingness to establish any dialogue with his political opponents in Belarus: 'Here is the position of our lousy opposition. Is not an opposition at all. It is a fifth column; they are the enemies of the Belarusian people.'

The issue of sanctions against Belarusian officials was debated by EU foreign ministers between 16-17 November. As stated ahead of the meeting by Jean-Eric Holzapfel the Charge d'affaires of the European

Commission's Delegation to Belarus, 'we want to develop relations, but for this we need progress on the major issues in Belarus. And the more progress we see, the greater will be the response from our ministers.'

As a result, on 17 November the EU Council decided that 'due to the lack of significant progress in the areas that were identified in the decisions of the Council on 13 October 2008, the Council cannot repeal the restrictive measures against certain Belarusian officials. Furthermore, it has decided to extend the restrictive measures until October 2010. However, to encourage progress in the areas specified by the EU, the Council has also decided to extend the suspension of restrictions on entry to a number of Belarusian officials... until October 2010.' The resolution expressed regret over the lack of sufficient visible progress in recent years regarding human rights and freedoms in Belarus. Violence had been used against both peaceful street protesters and political parties and public organizations and independent media had been denied the right to register. The EU called on Minsk to reform its electoral laws and stop exerting pressure on political activists and independent media. The EU welcomed a moratorium on the death penalty in Belarus. The resolution stated that the sanctions 'may be revoked at any time, but were dependent on the actions of the Belarusian authorities in regards to democracy and human rights.'

Carl Bildt, the Swedish Minister of Foreign Affairs, stated: 'The text of the resolution shows that our position is clear and firm. We are extending the sanctions and keeping them frozen at the same time. We are still interested that the Belarusian authorities move closer towards European values. I can simply say we are disappointed with the speed of progress. But we are not giving in.' Jerzy Buzek, the European Parliament President, added: 'If after these 12 months there is no clear progress in democratization, then we will delay the EU's rapprochement with Belarus.'

In response, the Belarusian Foreign Ministry said: 'We regret that yet another 'condition', one of many restrictive measures that the EU is still using against our country, is at odds with the very logic of the Belarus-EU dialogue. This is a sign of double standards and they are preventing us from reaching a mutually beneficial understanding.'

Customs Union of Belarus, Russia and Kazakhstan

In late 2009, quick progress was made in the formation of a Customs Union between Belarus, Russia and Kazakhstan. At a meeting on 17 November between the respective heads of government and the Presidential Administration, Aleksandr Lukashenko took the final decision on Belarus joining the customs union. As the news agency *BelTA* reported, 'Belarus expects the union to be qualitatively different as it will be based on the principles of equality and mutual benefit and will adhere to the principles of the freedom of movement of both persons and services without tariffs. This will result in equal economic opportunities for businesses and the removal of unnecessary barriers to bilateral trade.' As the founders of the customs union stated, the next step in the economic convergence of the three countries should be the creation a single economic zone (SES).

In contrast to joint projects with the EU, Belarus' projects with Eastern countries, especially those with Russia and Kazakhstan, have never been subject to conditions concerning human rights and democracy. Lukashenko, commenting on his countries international relations in September 2009, stated, 'We have virtually no major problems with Russia, as for the West, you know what our relations are like.' Thus an Eastern geopolitical orientation of Belarus automatically means lower standards regarding human rights and a lack of development of democratic institutions in the country, since neither Russia nor Kazakhstan can be described as model states in these spheres.

Belarus views this union as purely economic without any sociopolitical burdens. Andrei Kabiakou, the Deputy Prime Minister, speaking before the House of Representatives, said, 'Belarusian participation in the Customs Union will allow us to buy Russian oil and gas at below market prices.' However, for Russia this project is not only of economic importance but it is also a political priority. Putin said on 3 December, 'For us, the main priority is still to integrate the states of the former Soviet Union and so we are very pleased to now see progress towards this in the formation of a Customs Union.'

On 27 November the Presidents of Belarus, Kazakhstan and Russia met in Minsk and signed all the requisite documents to establish the customs union The Presidents soon announced the next step toward integration. 'The Customs Union is a measure in preparation for the transition to a single economic zone, which that represent a complete-

ly new form of economic integration', said Dmitry Medvedev, the president of Russia.

It can be argued that the creation of a customs union between these three countries poses a question about how Belarusian society is to develop in both geopolitical and social terms and will also directly determine how the situation regarding human rights and democratic institutions is to develop.

* * *

In 2009 there were no irrevocable changes in regards to human rights and democracy. It was a period characterized more by a failure of expectations in regards to the liberalization of the country. Belarus remained both volatile and strongly influenced by both internal and external political factors.

1. The Death Penalty

2009 was also the year when Belarus failed to either declare a moratorium on the death penalty or to abolish it. Belarus remains the only country in both Europe and the ex-Soviet Union that still passes and executes death sentences.

At the same time, for the first time in the history of independent Belarus the issue of the death penalty came to the wide attention of the public. Unlike in previous years when international organizations and the human rights community were the ones to raise the issue, in 2009 Belarusian government officials at various levels repeatedly stated that serious measures should be taken to abolish the death penalty or that a moratorium should be declared. However, it must be noted that the issue was primarily debated in political circles for clear pragmatic purposes and this was done in deference to the international community. Meanwhile, issues such as the effect of capital punishment on crime rates, the humanitarian treatment of prisoners and basic morality were barely mentioned in official statements. Nonetheless, civil activists, in their turn, did their best to raise these issues in the general discussion.

In the first half of the year there was hope that the Belarusian authorities might be ready to consider the abolition of the death penalty or a moratorium on its use. The authorities in Minsk considered it as a way of demonstrating their willingness to liberalize the country and facilitate their dialogue with the European Union. This was also an issue that had been made a condition of Belarusian membership of the Council of Europe. This position is clearly evident from statements made by Belarusian officials.

On 21 January, at a press conference, Ryhor Vasilevich, the Prosecutor General of Belarus said that he would not rule out the abolition of the death penalty in order to join the Council of Europe: 'This is a requirement of the Council of Europe. If we join, we have to adopt the existing rules. They say that when in Rome do as the Romans do.' However, the Prosecutor General added that at this stage he considered the existence of such a punishment as justified 'primarily as a deterrent.'

A moratorium on the death penalty would help to 'more easily establish' a dialogue with other Europe countries, said Anatol Hlaz, the Vice-

1

Chair of the Commission on Human Rights, National Relations and Mass Media of the House of Representatives, at a press conference on 20 May. He stated that Belarus could consider this issue and that it was now possible 'to work out the legislative framework for a moratorium on the death penalty.' Mikalai Samaseika, Chair of the Committee on Legislation and Legal and Judicial Affairs, in an interview with the *Komsomolskaya Pravda* newspaper (07/04/2009) argued that 'at present the Republic of Belarus has actually debated the question of abolishing the death penalty; however, initially a moratorium on the death penalty should first be considered. Officially, the issue has not yet been raised in Parliament, but the time could easily be ripe for it within the foreseeable future.'

A number of statements were made by the Presidential Administration suggesting that people were working on the issue. On 11 June Valery Mitskevich, the Deputy Head of the Administration, said, 'The issue of the death sentence is not a new one. It is constantly under consideration and will be so for as long as no final decision is made.' According to him, the declaration of a moratorium was quite possible: 'Any decisions and any legislative measures are possible. To do this, we have to pass either a draft law, or there has to be a presidential decree. On 17 June, during a meeting of the Public Advisory Council on making the penal system more humanitarian, Uladzimir Makey, head of the Presidential Administration, stated that 'the issue of capital punishment should not be seen as something that is fixed forever. I have also met Mr. Rigoni [*PACE's Rapporteur on Belarus — Ed. Note*] and we have talked about the issue. We have already reduced the number crimes specified by the Criminal Code that may incur the death penalty and already in practice the punishment is applied less frequently. Furthermore, it [*the issue of abolishing the death penalty — Ed. Note*] must be reconsidered in the context of Belarus' accession to the Council of Europe. Thus far, we have only talked about the restoration of Belarus' Special Guest status, but if a clear decision is made on our membership in the Council of Europe, we will have to take this further step [*to declare a moratorium on the death penalty — Ed. Note*].'

Meanwhile, there has been a clear desire on the part of European institutions to establish closer relations with the Belarusian authorities. On 26 May, PACE's Political Affairs Committee unanimously decided to restore the Belarusian Parliament's Special Guest status. Gцran Lindblad, the Committee's Chair stated, 'We believe that in this way we can

1

promote change in a country that lacks democracy, a country with a repressive government, a country where the death penalty still exists...' Officials in Minsk thought the issue of the restoration of Belarus' Special Guest status as all but settled. Due to this, when the Parliamentary Assembly of the Council of Europe raised the issue of the death penalty in Belarus at an assembly on 23 June in Strasbourg the Belarusian officials were deeply shocked. Speaking in the debate after Andrea Rigoni's report that recommended the restoration of the Belarusian Parliament's Special Guest Status, Christos Pourgourides, the Vice-Chairperson of the PACE Committee on Legal Affairs and Human Rights entered a proposal to do so only after the declaration of a moratorium on the death penalty. Speaking emotionally on the importance of this condition, Mr. Pourgourides stated, 'In Belarus, they shoot people and the families of the executed are not given the bodies and not informed, where they have been buried [*this is the standard practice when carrying out executions in Belarus — Ed. Note.*] According to him, 'there is still very much work to do' before the restoration of Special Guest status to the Belarusian parliament. 'In Belarus many bad things happen. before restoring their status, we need to hold the Belarusian authorities to certain conditions', stated Mr. Pourgourides expressing his beliefs. The vast majority of PACE deputies supported this proposal and voted for the adoption of the amendment to the resolution, thus they demonstrated that the EU requires, before it initiates a dialogue and before its institutions make concessions, more from the Belarusian authorities than just rhetoric; Belarus is expected to take definitive and swift action and to pass legally binding measures declaring a moratorium on the death penalty.

On the same day, 23 June, the Foreign Ministry of Belarus expressed its disappointment on PACE making new conditions for the restoration of Belarusian Special Guest status, 'particularly in regards to a moratorium on the death penalty.' At the same time, the Foreign Ministry said that it understood the Council of Europe's position on the death penalty: 'The Parliament of Belarus is doing the necessary analysis and considering all the steps that are required, as is the wider legal community of the country. However, the weight of public opinion as it was expressed in the 1996 referendum held on this issue must also be taken into account.' The Foreign Ministry's statement noted that 'as far as we understand, the abolition of the death penalty or a moratorium on its use, which would bring us into accordance with the statutes

of the Council of Europe, is a condition for accession to the Organization and not one for being granted Special Guest status.'

Valery Ivanou, the Vice-Speaker of the House of Representatives, who represented the National Assembly of Belarus at the PACE session stated, after the vote on the Belarusian issue, that 'today a political decision was taken. A legal decision by the PACE/ODIHR will be taken in the fall [*7 September at a meeting of the PACE/ODIHR in Paris — Ed. Note*]. Up until this time we will work on this issue.'

The Belarusian authorities, having received a clear and unambiguous message that if they really wanted to see their Parliament join PACE they would have to meet the condition of declaring a moratorium on the death penalty, immediately began to ostentatiously demonstrate how much progress they were making on this issue.

On 25 June Valiantsin Sukala, the Chair of the Supreme Court, said that the judicial system of Belarus was ready for the declaration of a moratorium on the death penalty. 'As it is stated in the Constitution of Belarus', he added, 'that this exceptional form of punishment is only a temporary measure and this formulation of words will inevitably lead to its abolition.' Mr. Sukala also suggested that a moratorium on the death penalty should be an intermediate stage on its way to abolition and he considered the measure both possible and very reasonable. The head of the Supreme Court mentioned that in Belarus there already was another form of extreme punishment, life imprisonment and he stressed that, 'In its gravity and severity it is not substantially inferior to the death penalty.' In recent years, according to Mr. Sukala, the death penalty had rarely been used in Belarus, 'so there are no obstacles there in terms of jurisprudence.'

On 29 June Viktar Huminski, the Chair of the House of Representatives' Commission on National Security, made a statement that a working group to discuss a moratorium on the death penalty was to be formed in the Belarusian Parliament. The deputy said: 'My position is that we should get closer to abolishing the death penalty. Not because Europe has given us this condition, but because we ourselves might wish to put this question on the agenda. It is inevitable. I think that we will soon make a mature decision and abolish the death penalty without any outside pressure.' Mr. Huminski himself was expected to head the parliamentary working group.

In early July, Siarhei Matskevich, the Chair of the House of Representatives' Committee on International Affairs and the CIS Relations,

said that the departments concerned were considering the need to establish a working group to discuss a moratorium on the death penalty. According to him, the establishment of such a group was being considered by the Parliament, the Foreign Ministry, the government, the Presidential Administration, courts and prosecutors. 'If this is to be an inter-agency group, it needs to be large enough to include several people from each agency. The question of a moratorium could be agreed upon before the meeting of the PACE/ODIHR in September. Theoretically, we could do this before then [*declare a moratorium — Ed. Note*].' Mr. Matskevich also noted that 'it is not yet clear whether there is a need for such a group.'

Meanwhile, state-owned media started publicly campaigning against the death penalty. In early July, the state television channel ONT hosted a talk show on the subject with representatives of the state agencies concerned and human rights activists. On 30 June the state owned newspaper, *Sovetskaya Belorussia* hosted a round table discussion on making the criminal justice system more humane and in particular on the use of the death penalty. It was attended by government officials, members of the clergy and human rights activists.

The rhetoric used by the Belarusian authorities in this period left no doubt that the issue of a moratorium on the death penalty was on the agenda and could be resolved in the near future. However, these expectations were not fulfilled. Moreover, as the rhetoric of the Belarusian authorities became ever more uncompromising, there was a clear retreat from their former position and this represented a clear challenge to the European community. On 29 June and 17 July two new death sentences were passed. All work in regards to suspending the death penalty was in effect suspended; no information on the preparations for a moratorium was made public, nor was there any information about the establishment of a parliamentary or of an inter-agency working group. Minsk officials once again demonstrated an unwillingness to compromise on any issue that was considered to be exclusively political. The general position of the Belarusian authorities was outlined on 19 October by Aleksandr Lukashenko, when he received the ambassadors of 11 countries: 'Belarus will not take any hasty steps to please Europe when making any internal decision' and 'putting pressure on Belarus is futile.'

Despite the stubbornness of the Belarusian authorities, the European community continued to send signals making clear its willingness to

cooperate. On 11 September Goran Lindblad the PACE Political Committee's head said that the Belarusian Parliament could regain its PACE Special Guest Status before the end of the year if the country were to abolish the death penalty. 'I would be happy if they [*the Belarusians — Ed. Note*] returned to PACE by the end of the year, but it all depends on them.'

On 20 October Jean-Eric Holzapfel, the Head of the European Commission's Office in Minsk, expressed his hope that Belarus would declare a moratorium on the death penalty as soon as possible. Meanwhile, he noted that it was one of the conditions imposed by the EU for the further development of relations and noted that the moratorium on the death penalty was a stipulation among the 12 conditions laid down by the EU in 2006 before relations with Belarus could be improved.

After a long period of inaction, the Belarusian authorities returned to the issue of the death penalty in late 2009.

On 29 November, ahead of Prime Minister Silvio Berlusconi's visit to Belarus, Aleksandr Lukashenko in an interview for *La Stampa* stated that the government would campaign for the abolition of the death penalty in Belarus. 'We made the decision a week ago and so we are going to take take a number of steps to further this goal, starting with parliamentary hearings and the raising of the topic in the media.' Aleksandr Lukashenko also mentioned that in the 1996 referendum a majority of people chose to retain the death penalty and thus its abolition could only be achieved through yet another referendum.

During the visit of Jean-Louis Laurens, the Council of Europe's Director General of Democracy and Political Affairs to Minsk between 30 November and 1 December, he stated in a press conference that, 'the main issue, which [had] dominated the discussions, was the question of abolishing the death penalty. Today, the abolition of the death penalty is part of the standards and requirements of the Council of Europe. If Belarus wants to join the Council of Europe, to become part of the democratic family, this issue cannot be avoided.' Jean-Louis Laurens also commented on the issue of the death penalty being a condition for the restoration of the Belarusian Parliament's Special Guest status in PACE: 'Irrespective of our attitude to this, the decision has been taken already. There is a need for media coverage and other campaigns. And finally, this decision must be made at the political level.'

On 2 October at the opening of the third session of the House of Representatives, the Speaker, Uladzimir Andreichanka, said that the possibility of a moratorium on the death penalty or its abolition could be considered at a roundtable discussion under the auspices of the Council of Europe. He also stated that preparations for such a meeting were under way. 'The opinion of the Belarusian people cannot be ignored in our approach to such complex issues as a moratorium on the death penalty or its abolition, or issues such as the recognition of Abkhazia and South Ossetia.', he stated, 'The deputies need to take into account the views of their voters.' Unfortunately, by the end of the year the Belarusian MPs had still not kept their promise; 'the roundtable talks' had not been held and no poll of voters' opinions on these sensitive issues had yet been published.

References to 'popular opinion' and the results of the 1996 referendum were often found in those senior government official statements that concerned the issue of a moratorium of the death penalty or its abolition. On 20 October, Viktar Halavanau the Belarusian Minister of Justice, speaking at a presentation announcing the achievements of the project 'Promote the Wider Application of International Human Rights Standards in the Administration of Justice in Belarus', said that the declaration of the country's moratorium on the death penalty 'was a decision that could only be made by the Belarusian people.' Minister Halavanau said, 'In 1996, the question was put to a referendum. The opinion of the overwhelming majority of the people is known — it is premature to declare a moratorium. Today, the death penalty is applied in 86 countries of the world, including Japan and most states in the USA, but nobody would say that these countries are uncivilized.' Nevertheless, Mr. Halavanau said that, in accordance with a decision by the Constitutional Court, there was no legal hindrance within the country to the declaration of a moratorium on the death penalty. 'But if it is to be abolished', he added, 'one still needs to ask the people and to ask the relatives of those who have been murdered whether they can forgive offenders for the suffering imposed on their loved ones. I think each country should tackle this issue separately and rely primarily on the will of the people.' In his speech Mr Halavanau appealed to the victims of crimes and this trend to stress the emotional component of the issue was typical of many statements by many Belarusian officials in the year.

The country's authorities expressed mixed views in regards to possible legal mechanisms for the declaration of a moratorium. Most members of the legal community cited the decision of the Constitutional Court of Belarus of 11 March, 2004 'On the Conformity between the Consti-

tution and the International Treaties of the Republic of Belarus and the Provisions of the Criminal Code of Belarus that Provide for the Use of the Death Penalty', under which a moratorium could be declared at least as a first step, either by the head of state, i.e. the President, or the Parliament and accordingly it did not require a referendum. The resolution stressed that Paragraph 3 of Article 24 of the Constitution, which provides for the possibility of the use of the death penalty as an exceptional measure of punishment until its abolition, could allow for a moratorium on the death penalty or even for its abolition. The decision also stated that the results of the 1996 referendum, in which 80.44% of the population voted in favor of the death penalty, was not legally binding.

For this reason it was especially surprising when Piotr Miklashevich, the Chair of the Constitutional Court of Belarus who has been in office since 8 February 2008, stated at a press conference on 11 March, that the President and the Parliament could only initiate the abolition of the death penalty. 'The provision for the death penalty', he stated, 'is in the first section of the Constitution, which is under special protection. Changes and amendments to this section are only possible through a referendum.' He then referred to the fact that in 1996 more than 80% of the population voted in favor of the preservation of the sentence. Mr. Miklashevich's position clearly contradicts the Decision of the Constitutional Court adopted in 2004.

On 1 December Jean-Louis Laurens, the Council of Europe's Director General of Democracy and Political Affairs, said he was confident no referendum was required for a moratorium on the death penalty in Belarus: 'The political will of the country's leaders is needed here. For me it is primarily a question of morality. I am first of all guided by the fact that the death penalty is the only form of punishment, which cannot be reversed. Belarus should not abolish the death penalty for the sake of Strasbourg, but for the interests of the country. A referendum on this matter is not mandatory.'

Independent experts also believe that a referendum on a moratorium is not required: the Parliament could amend the legislation of the Republic of Belarus, i.e. the Criminal Code, by annulling the punishment, or a moratorium could be declared by Presidential decree.

A majority of the public still supports the death penalty, albeit only a slight one. In a national public opinion poll conducted in June 2009 by the Independent Institute of Socio-Economic and Political Studies, in answer to the question 'Are you for or against the abolition of the death penalty in the Republic of Belarus?' 41.7% responded in favor of abolition while 48.4% responded against. Sociologists believe that it is the lack of awareness among the general populace that bolsters support for the death penalty. It is interesting to note that, when compared to the September 2008 poll, the number of supporters of the death penalty increased slightly. In the previous poll 44.2% of respondents supported capital punishment and 47,8 % were against it. It is quite possible that the reason for this difference might only be the politicization of the issue and because state media covered it primarily in terms of the atrocity of the crimes and thus the coverage was very often overemotional. Nonetheless, the polls do show that a large number of Belarusian citizens now hold far more liberal views in regards to the death penalty, so it is fair to assume that the 1996 referendum no longer reflects current public opinion.

Article 24 of the Constitution guarantees everyone the right to life. It also establishes the death penalty as a temporary measure: 'Until its abolition, the death sentence may be applied in accordance with the law as an exceptional penalty for especially grave crimes and only in accordance with the verdict of a court of law.' The Criminal Code provides for the death penalty for 12 offenses in peacetime and 2 crimes in times of war. Those with death sentences may apply to the President for clemency. The President also considers the death sentences of those who do not seek clemency. A petition for a pardon may be filed within 10 days of the receipt of confirmation of the verdict or of the appeal decision. If the convicted person has not filed a petition for clemency in a timely manner or failed to notify the authorities that he will not apply, a legal document is drawn up. The petition or the legal document is then submitted to the President no later than three days after it is filed. The sentence is then suspended until the case has been considered. Petitions for clemency, as well as the case materials for those convicts who do not seek clemency, are dealt with by the President's Pardon Commission, which holds its meetings at least once every three months. Applications for pardon by those who have been sentenced to death, or case materials of those who refuse to apply for pardon, are sent, prior to their consideration by the Commission, to the Supreme Court and the prosecutor's office. Within two weeks, these two bodies will then present their conclusions which are based on the merits of the court's decision, on the circumstances in which the crime was committed, on all relevant data on the convict, as well as on their recommendations based on the

merits of each application or on the case materials. After consideration by the Commission, all the materials together with the Commission's proposals are submitted to the President. The decision to pardon or reject a request for clemency is made in the form of a Presidential decree, which is then sent to the Supreme Court for implementation. The supreme court then files a report with the President reporting on how his decree was executed.

Despite the fact that the *Regulations on the Exercise of Pardon in the Republic of Belarus* allow both for representatives of public organizations and the media to be invited to the Commission's meetings (Paragraph 9) and for their proceedings to be covered by the media (Paragraph 24), their work remains secret. Above all it concerns cases of those sentenced to death. The only information that was made publicly available was the Commission's 2003 decision to deny a petition for clemency filed by two convicts with death sentences. The Supreme Court, in its supervisory role, ordered the review of one of the cases, resulting in one man's death sentence being commuted to a 15-year-prison sentence. No other information regarding the Commission's proceedings, or decisions by the President concerning death convicts has been made public.

Two death sentences were passed in Belarus in 2009 (2008 — 1, 2007 — 4, 2006 — 9, 2005 — 2, 2004 — 2). On 29 June Brest Regional Court sentenced Vasil Yuzepchuk, a 30-year-old resident of Drahichyn district, to death. He was found guilty of committing a series of murders of elderly women. On 17 July the Minsk Regional Court convicted Andrei Zhuk, a 25-year-old resident of Salihorsk, of murdering two men and sentenced him to death. On 2 October the Supreme Court upheld the Mr Yuzepchuk's sentence and on 27 October, that of Mr. Zhuk's. Ryhor Vasilevich, the Prosecutor General told reporters on 19 August that the death sentences were absolutely justified: 'This measure of justice is harsh, but fair. Unless our Criminal Code is changed in this respect, the Constitution provides for the death penalty.'

Mr Yuzepchuk and Zhuk lodged petitions for clemency with the President. Vasil Yuzepchuk asked for his life to be spared, insisting that future evidence might arise that would prove his innocence. If the sentence is carried out, then, if there is an error, it will be impossible to correct. According to the lawyers who represented Mr Yuzepchuk, the verdict by Brest Regional Court was based only on circumstantial evidence and there was no direct evidence. The conviction was primarily

based on the testimony of the militia. There is recorded evidence that during his detention at the remand center Mr. Yuzepchuk had been beaten up. An expert panel also concluded that Mr Yuzepchuk was mentally deficient, had a poor understanding of what was happening and was illiterate. Therefore, there is very serious concern that his guilt was not proven more conclusively. In the case of Andrei Zhuk, the lawyers also noted that the death penalty was too cruel and unusual a punishment because there were certain mitigating circumstances. He had admitted his guilt, voluntarily cooperated with investigators and shown remorse for the crime.

With the help of human rights activists, Vasil Yuzepchuk submitted a personal petition concerning the violation of his rights, including the right to a fair trial and the right to life, to the UN Human Rights Committee. On 12 October, the Committee registered the petition under number 1906/2009 and demanded that Belarus not execute the death sentence before considering its merits. Andrei Zhuk's mother also submitted a petition to the UN Human Rights Committee and on 30 October the petition was registered under special procedures number 1910/2009. In accordance with the special procedures, the Geneva-based office of the High Commissioner for Human Rights sent the Republic of Belarus a message about the registration of the petition and required it not to execute the death sentence while the case was under consideration by the Committee.

Both the EU and the Council of Europe strongly criticized the death sentences. 'The passing of another death sentence in Belarus indicates the urgent need for a moratorium on the death penalty,' said Luis Maria de Puig, PACE President, on 4 July, in response to Yuzepchuk's conviction. 'I call upon the Belarusian authorities not to carry out the sentence and to take all the necessary measures for a declaration of a moratorium and to demonstrate their willingness to move towards the values and standards of the Council of Europe and thus bring all of us a little closer to the ultimate abolition of the death penalty on the European continent', she said. On 3 August the press-service of the European Commission's office in Minsk issued a statement that noted that the European Union had expressed its grave concern over the imposition of two death penalties in Belarus. The statement stressed that the EU 'opposes capital punishment in all cases and under all circumstances and has consistently called for its abolition worldwide. The EU is convinced that the abolition of the death penalty is essential to protect

human dignity and to further the development of human rights.' After the Supreme Court upheld the death sentences, a joint statement was made by Samuel Zbogar, the Chairperson of the Committee of Ministers of the Council of Europe and Terry Thorbjoern Jagland, the CE Secretary General, which called on the Belarusian President to pardon the convicts and commute the death sentences to imprisonment. 'Such an act of mercy by the President of Belarus will be an unambiguous signal of Belarus's intent to join the 47 member states of the Council of Europe, which have suspended or abolished the death penalty', the statement emphasized.

In 2009 human rights activists were most concerned about the issue of the death penalty. The Human Rights Center *Viasna* and the Belarusian Helsinki Committee together with the support of Amnesty International in January launched a campaign called 'Human Rights Activists against the Death Penalty'. During the year, legal aid was provided to prisoners that had been sentenced to death, an extensive educational campaign was run (to the extent that such a campaign is possible in Belarus when considering the current monopolization of mass media by the state) and press conferences, debates, competitions, mass rallies and such other activities were organized. In this manner human rights activists intended to maintain a free and open debate on the death penalty that discussed moral values, human dignity and the standards of a civilized society. The idea was to allow people to come to their own conclusions in regards to this complex problem.

During the campaign a petition was drawn up that demanded the abolition of the death penalty in Belarus. It was signed by more than 30 people, including famous cultural and public figures, human rights activists, lawyers and scholars. On 10 December it was handed over to the Presidential Administration and a copy was sent to the House of Representatives. On 24 December the organizers received a response from Viktar Huminski, the Chairperson of the House of Representatives' Commission on National Security. 'As you know, this summer PACE restored the Special Guest status to the National Assembly of the Republic of Belarus for one year, but on condition of the declaration of a moratorium on the death penalty,' the MP said. The information in the letter was wrong and it is obvious that the Chairperson of the Parliamentary Commission was unaware of the current state of relations between Belarus and PACE. At the same time, the deputy's letter showed that the legislature was ready to address the issue of capital punishment:

'Belarus has come to the point where society should begin a detailed, transparent and wide discussion about the abolition of the death penalty. Because of this we, the deputies, must hold a dialogue with the people. It could take many different forms. But first of all we shall look into the possibility of holding parliamentary hearings on the subject.' Human rights activists welcomed the MPs' declared intention to establish a dialogue with the people and urged them to hold parliamentary hearings that would involve the widest possible range of parties concerned, including defenders of human rights in Belarus and representatives of international human rights organizations.

The Belarusian authorities did not actively oppose human rights activists from campaigning against the death penalty, but nonetheless some were detained. On 5 June, the participants of a street performance that included the distribution of informational leaflets were arrested for the alleged 'participation in a mass public event' (they were later released without charge). On 10 October, during a rally in Navapolatsk marking the World Day against the Death Penalty, the militia detained Zmitser Salauyou, a human rights activist, as well as two others. The detainees were taken to the local militia station to be processed, where an hour later they were released without charge. In many regions activists from other organizations, especially youth organizations, supported the campaign. The *Young Front* held a rally to protest against the death penalty on 10 August in Brest. In Hrodna human rights activists were joined by the BSDP Hramada, the UCPB, the *Young Democrats* and the Civic Forum.

Human rights activists welcomed the declaration by the European Union that the Belarusian Parliament could not regain Special Guest Status in PACE without a moratorium on the death penalty, as they considered this to be a very significant step that symbolized the spirit of human rights and European values.

Amnesty International, the worldwide human rights organization contributed greatly to the campaign against the death penalty in Belarus. Their representatives made two visits to Belarus over the course of the year. On 24 March at a press conference in Minsk, Nicola Duckworth, the Europe and Central Asia Programme Director and Heather McGill, an Amnesty International specialist adviser, presented a report entitled 'Stop the Death Penalty in Europe: towards the Abolition of the Death Penalty in Belarus'. They also called on the Belarusian authorities to promptly declare a moratorium on the imposition and execution

1

of capital sentences as a first step towards the complete abolition of this form of punishment. Human rights activists demanded the right to information on cases that involved the use of the death penalty and called for a discussion about whether to keep it. During Amnesty International's visit to Belarus, their representatives were received by officials from the Ministry of Justice, but ignored by the Minister of Internal Affairs and by the Presidential Administration. When Heather McGill came to Belarus, she participated in a roundtable discussion on the death penalty held by the OSCE. She regarded the willingness of the Belarusian Parliament, the Ministries and the Supreme Court to discuss the issue as a positive development in the Belarusian authorities' attitude in regards to the problem. 'This is a significant step forward. Of course, we believe that this is not enough. We want to see definite steps for a moratorium. Yet, there is hope,' said the expert from Amnesty International.

Thus, in 2009 Belarus failed to demonstrate decisive political will and took no steps to abolish the death penalty or to declare a moratorium on its use. The death penalty is still used by the Belarusian authorities as a counter for political bargaining and human life is not regarded as something so sacrosanct that it may not be infringed upon by anyone, including the state.

2. Politically Motivated Disappearances

2

2009 saw the tenth anniversary of a number of political disappearances including that of Yury Zakharanka, the former Interior Minister who was «disappeared» on the 7 May 1999 and Viktar Hanchar, the Deputy Prime Minister and the Deputy Speaker of the 13^{th} convocation of the Supreme Soviet, who vanished on 16 September 1999 together with Anatol Krasouski, a businessman, who was with him at the time. The year also marked nine years since the disappearance of Dzmitry Zavadski, an ORT TV cameraman, who was abducted on 7 July 2000. During this time the fate of these people was unknown and those involved in their abductions remained unidentified and unpunished.

The official investigation into the disappearance of Dzmitry Zavadski was suspended on 31 March 2006 'due to the impossibility of locating the missing person'. Since that time it has not been resumed. Volha Zavadskaya, the journalist's mother, received the last official report on its progress in November 2007. Mr Sytsko, the Prosecutor of the Department for Supervision of Investigations in Public Prosecution Bodies, said that 'the search to locate the whereabouts of Mr. Zavadski or his body, or the persons who have committed the crime is still in progress. In light of further information, criminal proceedings will be immediately resumed.' However, there was no explanation as to whom Mr Sytsko had had in mind to prosecute, since the members of what had been known as 'Ihnatovich's gang' (former officers from the *Almaz* special militia unit) had already been sentenced in 2002 to various prison terms on charges of kidnapping Dzmitry Zavadski and of various other crimes (including Ihnatovich and Malik, who were both sentenced to life imprisonment).

There were official investigations into the disappearance of Yury Zakharanka, Viktar Hanchar and Anatol Krasouski and the relatives of the missing people, including a representative of the Zakharanka family, were informed every three months of their progress by official letter from the Minsk City prosecutor's office. However, the only information reported was that the investigations had been extended and that their findings had yet to be announced. The families repeatedly appealed to the investigating authorities for additional information. In late 2008 Zi-

naida Hanchar, the wife of Viktar Hanchar, was informed that the investigator of her husband's case had been changed and on the 12 January she requested a meeting with his replacement, Yury Varauka, junior counselor of justice in the Minsk City prosecutor's office responsible for particularly important cases. As the injured party, she had the right to information concerning decisions made in the case as well as copies of their documentation. In a telephone conversation, Mr. Varauka said that he saw no reason for the meeting and suggested she submit a written request instead. The request was submitted to the Minsk prosecutor's office, demanding that the new investigator provide Zinaida Hanchar 'in accordance with paragraph 14 of Article 50 of the Criminal Procedure Code of the Republic of Belarus with documentation of the decisions concerning the reopening and extension of the preliminary inquiry regarding Viktar Hanchar's disappearance.' The written request was also rejected. the investigator refused to meet Zinaida Hanchar and provide answers to her questions. It should be noted that this was a continuation of the practice of the investigative body as the case's former investigator Siarhei Kukharonak had also failed to comply with a single request and had also been repeatedly asked to hold meetings to discuss the preliminary findings of the investigation.

In frustration at being totally ignored when requesting information about the progress of the investigations and due to the lack of any information or even formal replies to their requests, the relatives of the missing people contacted Ryhor Vasilevich, the General Prosecutor of Belarus, personally.

On 6 February the Prosecutor General received a letter from Yury Zakharanka's wife, Volha with a request that he personally answer some questions about the status of the investigation into the disappearance of her husband. 'During your tenure as Prosecutor General you have not taken any steps to even dispel the rumor that a number of senior state officials were involved in the disappearance of my husband. Every three months I receive a letter that simply states that the investigation is still in progress and that I will be informed as to its findings upon its completion. I have regularly received the same evasive answer for the last ten years', she wrote. She also requested the Prosecutor General provide answers as to who among the special services personnel were investigated for possible involvement in the disappearance of Yury Zakharanka, which employees of which offices were suspected of abducting her husband and whether the following state officials had been interrogated as suspects — Viktar Sheiman [*1995-2000 — the State Secretary of the Security Council — Ed. Note*], Yury Sivakou [*1999-2000 -the Minister of Internal Affairs — Ed. Note*] Uladzimir Navumau (*1999-2000 — the Head of the Presidential Security Service — Ed. Note*) and Colonel Dzmitry Paulichenka [*the commander of the special rapid reaction forces in 1999- Ed. Note*]. However, the official did not respond directly to the questions and instead gave her the runaround.

In August, an appeal to the Prosecutor General Ryhor Vasilevich was sent by the wives and mothers of Viktar Hanchar, Dzmitry Zavadsky and Yury Zakharanka, who stated: 'It has been ten years since the office you head started investigating what happened to our husbands and sons. All this time, the investigating authorities and the overseeing prosecutors have demonstrated an inability to effectively investigate these crimes. Because of the inaction of the authorities and the possible incompetence of the investigative authorities, we continue to be kept in the dark about the fate of the people we love, which causes us great moral and physical suffering. The investigations have been repeatedly prolonged with no concrete results. The government has clearly been procrastinating. As a result, the cases against the perpetrators of these crimes will have to be terminated under the statute of limitations. We want to know the results of the investigation, which has gone on for ten years already. We insist and demand that we be briefed with the procedural documentation, which contains the results of the investigation of the cases, as well as the legal judgments and the conclusions. We require that within the period of one month — before 16 September — you make public a report on the results of the investigation thus far. You may choose any format you wish (for example a personal meeting, or an interview with the Belarusian media); however, it is absolutely impermissible to hold back the truth, or to hide behind various formal excuses and evasive replies. If Belarusian law enforcement agencies cannot investigate these crimes, we are ready to help by inviting in investigative bodies from other countries. We want the perpetrators of these crimes to be punished.' However, the reply to this appeal was another formal letter which was forwarded to the prosecutor's office in Minsk, who continued to send formal letters that stated the investigations were still in progress.

Thus prosecutors at all levels continued to pursue a policy of procrastination by pretending that the investigations were active. They also

continued to suppress information as to their findings and to ignore the legitimate demands of the victims. In 2009, there was no new sign that the prosecutor's office might carry out an unbiased investigation in order to establish the identity and prosecute the people involved in these crimes. Moreover, the lack of results after a decade of investigation into the disappearances of these well-known people in Belarus has given credence to the belief of many people that an official full-scale investigation can never be conducted, because of the interference of senior Belarusian officials. Moreover, these actions have fueled the suspicion that people who hold or held high public office were involved in the crimes. International and Belarusian advocates for democracy do not exclude the possibility that Viktar Sheiman, the former Secretary of the Security Council and Prosecutor General, as well as Uladzimir Navumau and Yury Sivakou, who are both former Ministers of the Interior and also Dzmitry Paulichenka, the former commander of military unit 3214, were involved in these forced disappearances and extrajudicial punishments. Meanwhile, the official investigation has ignored this information for years (though they have not refuted it either) and have taken no adequate steps to ascertain its veracity.

While representatives of the official investigation were evasively failing to provide any information on the disappearances of well-known people, Aleksandr Lukashenko as never before commented on this issue. In an interview with *Zavtra* a Russian newspaper (№ 24 (812), 10 June 2009), Aleksandr Lukashenko said that 'there are a lot of reasons, political, psychological and social ones, that impede our Union. But all of them have been served up with the sauce of an alleged lack of democracy in Belarus: Lukashenko is a dictator, they say and people disappear in Belarus. Three people are dead and the media have kept on harping on about it until now. Lukashenko killed them, they say, because they were opponents of the regime. In fact, two of these cases are business related murders, — they promised to buy or sell something and did not keep their promise and thus they were killed, as often happens among gangsters. The killers have recently been found in Germany.' [*It is not clear which of the missing persons Lukashenko had in mind — Ed. Note*]. In this way the head of state, who was in no manner involved with the criminal procedures nor with the authority that supervises the conduct of criminal proceedings, demonstrated that he was aware of what was happening and commented publicly upon it. Neither the families nor their lawyers had any information about the

investigation nor were they allowed to study the documents, the issuance of which upon request of the victims is guaranteed by national law. Thus it came as a complete surprise to them when he stated that these crimes had been solved and that it had been proven that they had been murdered. As it appeared impossible to confirm the information voiced by the President through other official channels Viktar Hanchar's wife, Zinaida, who assumed the information concerned her husband, appealed to Ms. Giovanna Zucchelli, the Secretary of the UN Working Group on Enforced or Involuntary Disappearances and asked her to inquire of the Government of Belarus about the information disseminated by Lukashenko. At the end of the year it remained unknown as to whether such an inquiry had been made by the Working Group or what the result of it might have been.

In the same interview Aleksandr Lukashenko provided his explanation of the disappearance of the journalist Dzmitry Zavadski and said: 'For example, Dzmitry Zavadski from Channel One. What kind of rival is he to me? A man with secondary education? Why would I have to destroy him? 'Do you want to know the truth? There was a paramilitary group in Belarus led by Ihnatovich. They were well-trained. They used to be members of a USSR special-mission unit. These guys went to Chechnya during the war and fought for the Russians and then they returned home. Sharamet [*an ORT reporter, who was both a colleague and friend of Dzmitry Zavadski — Ed. Note*] and Zavadski came up to them to shoot a story for Russian TV. Their story reported that these Belarusian citizens had been fighting on the side of Chechen separatists against federal troops. Sharamet was lucky to get away, whereas Zavadski was caught. They started off by trying to frighten the guy: 'Why have you been slandering us?' But then they killed him. Ihnatovich got a life sentence and is sitting in one of our penal colonies.' The cameraman was murdered, while Sharamet, the provocateur, is living in Moscow and writing lies about Belarus.' It should be noted that Lukashenko described Ihnatovich and his gang as 'well-trained guys from the USSR special forces' and thereby dissociated himself from them. In fact, Ihnatovich was an officer in the special-mission unit *Almaz* from the Belarusian Ministry of Internal Affairs as were many of the other members of his gang which also included members from other branches of the Belarusian special forces. It is also worth noting that Aleksandr Lukashenko expressed confidence that Zavadski had been murdered, even though Ihnatovich and his associates had been convicted on charges

of kidnapping and not murder and that the investigation into the whereabouts of the journalist or his body have not yet been concluded. Meanwhile, the relevant investigating authorities have shown no interest in the additional information made public by the head of state that might shed light on the fate of the missing persons.

After the publication of this interview with Aleksandr Lukashenko, in which he suggested that there was a 'German link' in the disappearances, Anatol Liabedzka, the leader of the United Civil Party appealed to Chancellor Angela Merkel, in which he asked two questions. He asked whether law enforcement agencies in Germany were aware that the alleged murderers of Zakharanka and Hanchar were in Germany and whether the Belarusian authorities had requested the extradition anyone on the grounds that they may have participated in the organization of the murder of these people. Angela Merkel forwarded this request to the Ministry of German Ministry of Internal Affairs,who provided a definitive answer, stating that they knew of no such persons in Germany and that no official request had been made by the Belarusian authorities. The 'German link' in the disappearances and possible murders of Belarusian politicians that was mentioned by Lukashenko was refuted by the German authorities.

A few months later Lukashenko gave his opinion on the issue of these missing persons in an interview with reporters while he was on a visit to Lithuania. The visit took place on 16 September and fell on the tenth anniversary of the abduction of Viktar Hanchar and Anatol Krasouski. The official purpose of the visit was the opening of the Lithuanian-Belarusian forum 'Belarus and the Baltic Sea States: New Opportunities for Cooperation'. This was Aleksandr Lukashenko's first visit to an EU country after years of political exclusion. Lukashenko, no doubt, had known that reporters were going to ask him questions relating to these high-profile disappearances and therefore firstly tried to play them down as if these disappearances were no more than a regular occurrence. Being well prepared, he remarked: 'Knowing how democratic you are, I made inquiries as to the following information. The number of people who have gone missing without trace in Belarus since 1991 is 2,289. (...) In the first eight months of this year 718 people have been found. There are 1,600 people who go missing a year, 900 of whom are found each year, which is less than the previous figure, unfortunately.' However, he had to answer tough questions from the Lithuanian media and to which he answered (quoted by *Lietuvos Rytas*): 'You call them high-ranking politicians? I do not think so. They held no positions. They were in my government. Viktar Hanchar used to be the Deputy Prime Minister and then he said goodbye and left. I really do not know what Krasouski has to do with anything, as you put it. Krasouski had no 'rank' at all. Dzmitry Zavadski was just a cameraman who worked with me. I do not understand what he has to do with politics at all. (...) Zakharanka was a former Minister. This Zakharanka was doing business with Ukraine. You should investigate that, if you're interested. He borrowed from someone and he was warned, «beware, be more careful». I wasn't the one who warned him; it was the people who he worked with in the Interior Ministry. No, I've got business! He owed millions. We have been investigating this version of events, though we do not reject any of the others. Most importantly, though you probably know this, we saw someone in a certain country. So straight away we demanded information. Here he has «disappeared», but there he is walking around. There were photos and articles in the newspapers, over there, but not in our country. Up to now we've not received any information. See and there's a whole bundle of issues and most importantly, neither the families, nor the relatives have attempted to help us establish the truth. Everything's been politicized. (...) All of these issues are intentionally being used as weapons — against Lukashenko. (...) And by the way, they were not opposition. (...) Viktar Hanchar? Well, what kind of opposition leader was he? He worked for those who paid the most money, so what are you saying? Well, I know Viktar better than you. Although the family keeps on clamoring where is my husband, where is my son and so on, it's me, above all, who should be asking them, where is your husband, where is your son! Why didn't you see what he was doing before he went missing? Why weren't you paying attention? As soon as he goes, it all becomes politics and they start making money from it. We all know this is happening. Therefore there is no need to make a political issue out of this. There is no point in setting out political policies against Lukashenko and Belarus that are based on human grief. There's no need, because it will bring no benefits. Believe me, before you sits a man who is well aware of what is going on around him. I won't be specific, but I know very well what is happening. (...) You want to know what is happening at what level? Then please go and ask the Prosecutor General — that's his job in the country. This issue is under the supervision of the President; these people regularly report to me about what has recently been done as they do about many other important politically

motivated activities.' Lukashenko also spoke up in defense of the Belarusian officials who are suspected by the Belarusian and international community of assisting in the organization of the kidnappings: 'Why have you labeled these people as criminals without trial? You are a representative of a democratic society, therefore, you must understand that a person is only guilty when it is proven by law. Neither your courts, nor ours — and this must be within the jurisdiction of our courts — has found them so.'

Lukashenko's visit to Lithuania raised the issue of these disappearances in Belarus for many reasons. One of these was a personal appeal by the families of Hanchar, Zakharanka and Zavadski to Dalia Grybauskaitл, the President of Lithuania asking not to allow the visit. 'Lukashenko's visit, from our point of view, will mean one thing — the recognition by the Republic of Lithuania of the legitimacy of the current regime, which is still suspected of horrible crimes. (...) We, the relatives of the abductees, hope that you, Madam President, are able to understand our feelings. For us, these abductions by the regime are not just politics, but close members of our families, so we are forced to turn to every authority in the hope that we can be heard, in the hope that at least something will be done in order to ensure that our families may learn the truth about the fate of our loved ones. We believe that the issue of political disappearances in Belarus has a huge moral and humane dimension.' Also, before Aleksandr Lukashenko's visit to Vilnius, Zinaida Hanchar and Volha Zavadskaya held a press conference in the Lithuanian Seimas, which aroused great interest in the Lithuanian press. During the meeting with journalists, the relatives of the disappeared persons protested at the invitation of Aleksandr Lukashenko by the Lithuanian authorities. 'We still do not know why this visit was permitted. None of the EU requirements have been fulfilled by the Belarusian authorities. We do not understand the EU's position and for us, the relatives of the abducted opposition members, this is an insult', stated Zinaida Hanchar. However, in spite of everything, Aleksandr Lukashenko's visit took place and Dalia Grybauskaitл, the Lithuanian President, met the Belarusian leader, thereby demonstrating her intention to work closer with the Belarusian authorities. Moreover, the appeal by the relatives of the abducted politicians met with no reply from the President of Lithuania.

It is clear that Aleksandr Lukashenko's visit to an EU country and the actual lifting of the political isolation of Belarus must have been agreed upon by the Lithuanian authorities and the European Union, which continued its policy of involving the Belarusian authorities in a dialogue. At the same time, the EU actually forgot the earlier demands it had made in the 2006 document 'What the EU could bring to Belarus', which stated that 'to build the deeper relationship that we wish to have between the EU and the Belarusian people, to end the self-imposed isolation that the Belarusian government has brought upon its country's citizens, we ask that the Belarusian authorities should, first and foremost (...) properly and independently investigate or review the cases of disappeared persons'. At no time in the year was the issue publicly raised by the EU in their negotiations with the Belarusian authorities and the issue of the missing persons was not mentioned in the list of basic requirements that Belarus need fulfill for further negotiations to take place and for the accession of the country into EU programs. However, the issue remained contentious in the relations between the EU and Belarus.

The Belarusian authorities sent clear signals to the West by suspending those officials from office, whose names had been associated with the abduction and possible murder of Yury Zakharanka, Viktar Hanchar, Anatol Krasouski and Dzmitry Zavadski. On 6 April 2009 the President of Belarus accepted the resignation of Uladzimir Navumau, the Interior Minister. Officially, the minister himself resigned from his post for health reasons. However, Mr. Navumau continued in his post as Chairperson of the Federation of Ice-Hockey until December, when the former minister announced his departure from the Federation. However, he had previously stated his intention to take an active role in Belarus' preparations for the 2014 World Championship in Minsk. Soon afterward it became known that Uladzimir Navumau was going to leave Belarus to be employed by *Vneshtorgbank*, one of the largest Russian banks. In March, Colonel Dzmitry Paulichenka went into retirement. The military press-service reported that he had been dismissed from his post 'due to a disease'. The last post occupied by Paulichenka was that of deputy commander for military training of the Interior Ministry's public order corps (he was appointed in November 2008) and before that he had commanded the special rapid reaction forces of the internal troops (military unit 3214). Yury Sivakou, former Minister of Internal Affairs and Minister of Sport and Tourism, was the first of these people to leave state office; he currently teaches at the Militia Academy. In June 2008 Viktar Sheiman had to leave his post of State Secretary of the Security Council. The official reason for his resignation was his inability to

2

provide adequate security for the Republic Day celebrations, when there had been an explosion in the center of Minsk. Following his resignation, Sheiman continued as head of the joint Belarusian-Venezuelan high-level commission, to which he was appointed by the President back in September 2006, but in January it was announced that the former State Secretary had been appointed aide to the President and had been placed in charge of special assignments by the head of state. Observers have not ruled out the possibility that Lukashenko is unable to break his connections with the man who while in office performed a number of key functions for the Belarusian authorities which they wish to keep hidden from prying eyes.

Despite the apparent compromise that the West appeared to have made with the Belarusian authorities over the issue of these missing persons, the relatives of those abducted persistently tried to raise the issue at all levels. On 17 August Mmes Hanchar, Zakharanka and Zavadskaya appealed to the Prime Minister of Sweden (who at that time chaired the European Union), the Chancellor of Germany, the Parliamentary Assembly of the Council of Europe, as well as the Presidents of the United States and Russia, stating: 'We ask you to use all means possible and to exert your influence on the Belarusian authorities in order that they fulfill their obligations to the country's citizens and fulfill the international obligations that they assumed to conduct a full and objective investigation into the disappearance of our relatives. (...) In the absence of any real investigation of these high-profile cases, we ask you to initiate an international investigation into these crimes. (...) Belarusian officials have at various periods talked of a Russian or a German 'link' and have suggested that these crimes were of a commercial nature. However, it has long been understood that all of this is nothing but an attempt distract attention from the real reasons for the abductions of prominent Belarusian figures.'

At the same time the EU made no moves that might jeopardize its dialogue with the Belarusain authorities and so did not raise the issue of politically motivated disappearances, but neither did it rescind its decision to restrict the access to the European Union of those suspected of involvement in these crimes. It should noted that on 13 October 2008 EU foreign ministers decided to suspend for a period of 6 months their ban on 36 senior Belarusian officials entering the EU; however the ban remained in place for 5 people. Among them were: Viktar Sheiman, Uladzimir Navumau, Yury Sivakou, Dzmitry Paulichenka and Lidziya

2

Yarmoshyna the chair of the Central Election Commission. (The EU had imposed these visa sanctions against the officials in 2004). 6 months after the suspension of the ban, on 16 March 2009, the EU foreign ministers extended these visa restrictions for another 9 months yet they remained in suspension for the same 36 officials. The same 5 people were still prohibited from entering the EU. The same decision was made again in November, when the sanctions were once more extended until October 2010.

The issue of political disappearances in Belarus was first raised by Russia's President Dmitry Medvedev. At a Belarusian press conference, on 23 November, he said that Belarus had not appealed to Russia for help in investigating these high-profile crimes, including the kidnapping of Russia's ORT cameraman Dzmitry Zavadski. (the persons who had been found guilty of kidnapping the journalist were detained in Russia and had fought on the Russian side during the war in Chechnya). 'I do not know what appeals were made before, but during my presidency there have been none', said Medvedev. He emphasized that all the crimes committed in Belarus, as well as in Russia, 'should be thoroughly investigated, the guilty should be found and what has happened should be established. There is no doubt that a line should be drawn underneath these offenses.' The families of those who had disappeared expressed their desire to appeal to high officials in Russia, firstly in order to challenge the truth behind the Russian 'link' in the kidnappings of their relatives.

Throughout the year Belarusian pro-democratic community continued to draw attention to the issue of these disappearances. On the 16th day of every month [*Viktar Hanchar and Anatol Krasouski were kidnapped on 16 September 1999 — Ed. Note*] regular rallies were held in different cities and towns in Belarus in order to show solidarity with the families of the missing persons and the repressed. In most cases the rallies were unauthorized, since the authorities refused to grant them permission. In early May the Brest City Executive Committee turned down the application for the holding of a rally to mark the 10th anniversary of the disappearance of Yury Zakharanka that had been filed by local UCPB activists. The demonstration was banned, even though the activists had applied to hold it at the location assigned for such demonstrations by the executive committee — at the *Lakamatyu* stadium. The official reason for the refusal was that the stadium was to host a football tournament at the same time; however, the Brest authorities failed to offer any other place and time to hold the event. As a result, the ral-

ly was unauthorized and one of its participants Mikalai Koush was arrested. In Minsk, on the 10th anniversary of Yury Zakharanka's abduction some 30 people were arrested. They were taken to the Centralny militia station and had their fingerprints taken before being released without charge. In Homel five participants of a similar rally were charged and later given prison sentences (Uladzimir Katsora, as the organizer of the unauthorized mass rally) and a number of others were each fined BYR 350,000. The Minsk City Executive Committee turned down an application filed by members of the UCPB for a rally to be held at the site of Viktar Hanchar and Anatol Krasouski's kidnapping (at the crossroad of Fabrychnaya Street and Rabochy Lane in Minsk). The rally was to mark the 10th anniversary of their disappearance. When the activists came out into Kastrychnitskaya Square carrying photographs of the men who had disappeared on 16 October, the rally was brutally dispersed. About 20 people were arrested, though no charges were brought against them. Seven Participants of the memorial rally in Homel were prosecuted under civil procedures and fined a total of BYR 7,525,000 (about 2,700 U.S. dollars). In the second half of the year the authorities continued to crack down on demonstrations, including the Solidarity Day rallies, though they had tolerated such demonstrations before.

The authorities also continually hindered journalists from reporting on the enforced disappearances. The most illustrative case is the deportation from Belarus of Alexey Malkov and Yuri Babenko, two Russian journalists from the NTV Channel, after they had interviewed the wife of Viktar Hanchar and mother of Dzmitry Zavadski. They had come to the end of their trip to Minsk and were going back to Moscow, but on the evening of 14 August, security officers in civilian clothes arrested them at the International Education Center hotel, where they were staying. First they took them to the Maskouski district militia department in Minsk and then they were escorted to the airport, where they spent the whole night before being deported to Moscow early next morning. Officially, the journalists were accused of working without accreditation from the Belarusian Foreign Ministry.

Thus, in 2009, the fates of Yury Zakharanka, Viktar Hanchar, Anatol Krasouski and Dzmitry Zavadski were not clarified. The official investigation did not actually take place and its results were not reported to the relatives of those abducted nor to the public. Those responsible for the crimes were not identified or punished.

The year also saw European bodies refusing to raise the issue in order for them to establish a political dialogue with the Belarusian authorities and this represented a departure from the EU's previous principled position on the issue.

3. Criminal Prosecution on Political Grounds

3

In 2009, hopes for the decriminalization of many civil and political activities in Belarus were not realized. Article 193.1 of the Criminal Code (the illegal establishment of public associations, religious organizations, foundations or the participation in their activities) was not repealed, contrary to numerous statements by the authorities, who promised to review the Article. They proposed this as a step towards its subsequent repeal or toward a transfer of the liability for such an offense to the sphere of the civil law (the replacement of criminal charges for the activities of unregistered organizations with civil ones). The Criminal Code still possesses many other articles that are persistently condemned by Belarusian human rights activists. First of all they demand the repeal of the so-called 'defamatory articles': Article 368 — 'insulting the President of Belarus', Article 367 — 'slander against the President of Belarus', Article 368 — 'insulting a state official', Article 369.1 — 'discrediting the Republic of Belarus'.

2009 was marked by a reduction in the number of cases of criminal prosecution on political grounds. However, the facts recorded show that the Belarusian authorities failed to uphold a moratorium on the use of this type of harassment of the citizens of Belarus in that year.

During the year, 11 of those who were convicted in 2008 in the so-called 'case of 14', under Article 342 of the Criminal Code for participating in an entrepreneurs' peaceful protest (held on 10 January 2008) continued to serve prison sentences without being assigned open prisons. These men were: Artsiom Dubski, Maksim Dashuk, Tatsiana Tsishkevich, Aliaksei Bondar, Ales Straltsou, Mikhail Pashkevich, Ales Charnyshou, Mikhail Kryvau, Mikhas Subach, Pavel Vinahradau and Alexander Barazenka. That year, six convicts were granted amnesties, but the gramting of the amnesty of Tatsiana Tsishkevich, Aliaksei Bondar and Mikhail Kryvau, who had all left the country, did not absolve these people from threat of criminal prosecution for failure to serve their sentences. Two of those sentenced in 'the case of 14', Artsiom Dubski and Maksim Dashuk, who was a minor, were re-prosecuted for sentence evasion. Maksim Dashuk was sentenced to 1.5 years in a high security prison and Artsiom Dubski was sentenced to 1 year in a minimum-security correctional labor facility. Belarusian human rights organizations believe that the participants of 'the case of 14' are political prisoners and Amnesty International recognized all those under house arrest as prisoners of conscience.

In 2009, several criminal cases were initiated in Belarus, which, despite not directly being related to political or civil protests, nonetheless blatantly violated basic human rights. Foremost among these were the criminal cases brought against the believers of certain religious groups, including the case brought against Yauhen Volkau under Article 193.1 of the Criminal Code for participating in and organizing the activities of an unregistered religious organization, *The Unification Church* (The Moonies) and the case brought against Dzmitry Smyk a member of the 'Jehovah's Witnesses' under Article 435 of the Criminal Code for 'draft evasion', as well as a similar case brought against Ivan Mikhailau, a believer in the Messianic Judaism religious movement. Both Dzmitry Smyk and Ivan Mikhailau, citing their religious beliefs, asked to be assigned to an alternative civilian service, a right guaranteed under the Constitution.

3

The criminal prosecution of Leanid Svetsik, a well-known Vitsebsk human rights activist for allegedly inciting ethnic hatred was commonly considered to be an attempt to discredit the Belarusian human rights movement. He was a founding member of *Nasha Viasna* a human rights organization (successor to the Human Rights Center *Viasna* that was closed down by the authorities in 2003) and the Ministry of Justice used the example of the criminal case against Mr. Svetsik as evidence of 'the disorderliness' of the association's founders in order to twice deny it registration.

Another issue of special concern was the criminal proceedings brought under Article 13 of the Criminal Code (planning of a criminal act), Article 359 (terrorist attack), Article 295 (unlawful acts relating to firearms, ammunition and explosives), Article 218 (intentional destruction or damage to property) against three entrepreneurs from the town of Vaukavysk. Mikalai Autukhovich, Yury Liavonau and Uladzimir Asipenka were detained on 8 February with a warrant from the Hrodna region prosecutor and on 18 February they were charged under Article 218 of the Criminal Code with the intentional destruction of property. Prior to this, on 31 January, another local businessman Alexander Laryn was arrested by the militia. The detainees were initially charged with the arson a number of houses belonging to Vaukavysk officials,

which took place in 2005. On 25 September Yury Liavonau was released. All charges were dropped and the criminal case was dismissed. In October, the prosecution of several other suspects in the case was terminated. On 20 November Autukhovich, Asipenka and Laryn were officially charged with plotting a terrorist act — the assassination of Vasil Kamenka the Deputy Minister for Taxes and Levies and Uladzimir Sauchanka, the chairman of the Hrodna region executive committee. From the outset, the prosecution of the Vaukavysk entrepreneurs caused a public outcry. Back in 2006, Mikalai Autukhovich and Yury Liavonau had been convicted under the financial provisions of the Criminal Code, which was widely regarded by many members of the political opposition and by representatives of the international community to be a politically motivated persecution resulting from their civil and political campaigning. The authorities acknowledged this de facto by releasing Autukhovich together with other political prisoners in Belarus in 2008. The new criminal case was closed to the public: the lawyers were forced to sign a written undertaking not to disclose materials from the investigation. In protest against his imprisonment, Autukhovich went on hunger strike. The Human Rights Center *Viasna*, which considers the grounds for the imprisonment of Autukhovich and Asipenka to be political, believes that only a fair trial in open hearings with the participation of human rights activists, media representatives, international organizations and foreign embassies would be able to clearly explain the true reasons for their prosecution.

1. The criminal case against Artsiom Dubski

On 7 July the Mahiliou region Asipovichy District Court sentenced Artsiom Dubski, a *Young Front* activist, to 1 year of imprisonment in a minimum-security correctional labor facility. Dubski was charged with the violation of Article 415 of the Criminal Code (failure to comply with a restraint of movement order). Upon the passing of the verdict Dubski was taken into custody in the courtroom and sent to jail.

The youth activist had been previously sentenced to 2 years house arrest on 23 April, 2008 by Minsk Centralny Court under Article 342 of the Criminal Code (group actions violating public order) for engaging in a peaceful protest rally held in Minsk on 10 January, 2008 (‘the case of 14’). Shortly after the verdict Artsiom Dubski was forced to leave for the Ukraine because of the pressure exerted on him by the militia at his

residence in Asipovichy. On his return to Belarus criminal charges were once again leveled against Dubski.

At the end of the year the youth activist was still serving his sentence in a penal colony in Mahiliou.

2. The criminal case against Maksim Dashuk

On 23 February Maksim Dashuk, a youth activist, was summoned to the Maskouski militia station in Minsk, where he was charged under Article 415 of the Criminal Code (failure to comply with a restraint of movement order). The young man was held in detention, but the next day the young man was released from the detention center on his own recognizance. The sentence (1.5 years of house arrest), breached by Dashuk, had been passed on 28 May, 2008 by the Minsk Centralny District Court under Article 342 of the Criminal Code — ‘group actions violating public order’. Maksim Dashuk was convicted for participating in a peaceful protest rally held in Minsk on 10 January, 2008. At the time of the trial Dashuk was a minor.

3

On 15 June, 2009 the Maskouski District Court of Minsk sentenced Dashuk to 1 year and three months in a maximum security prison. The sanction for a breach of Article 415 of the Criminal Code is only imprisonment, however the court manged to apply Article 70 of the Penal Code — ‘the passing of a more lenient sentence than that specified for the offense’. The judge held that the difficult circumstances of M. Dashuk’s family and his young age could be considered exceptional mitigating circumstances allowing for a more lenient sentence.

3. The criminal case against Yury Kazak

On the night between 6 and 7 November the statue of Lenin was doused with paint in the town of Navahradak. The incident was followed by criminal proceedings and Yuri Kazak, the local leader of the unregistered BCD Party was arrested on suspicion of involvement. According to the investigator, the actions of Kazak were characterized as ‘intentional, violating public order and marked by a particular cynicism.’ The damage, caused by the activist ‘in order to humiliate the public interest and historical traditions, using paint’, amounted to 3,740 roubles.

On 7 December Yury Kazak was charged with ‘disorderly conduct’ under Part 1 of Article 339 of the Criminal Code. The court hearing

began on 29 December, but had not been completed by the end of 2009. Yury Kazak was released on his own recognizance.

4. The criminal case against Leanid Svetsik

On 20 May, 2008 the Vitsebsk region KGB bureau initiated criminal proceedings under Article 131 of the Criminal Code (‘the incitement of racial, ethnic or religious hatred’) following a number of reported cases of threats by the Russian National Unity (RNE) Fascist political party against some public figures of Vitsebsk.

On 23 May, 2008 the KGB carried out a 9-hour search at the private apartment of Leanid Svetsik, a local human rights activist, who was involved in the case as a witness, but at the next interrogation, he was declared a suspect. In September 2008 the criminal case against Mr. Svetsik was suspended, but in March 2009 resumed.

In 2006-2007, Mr. Svetsik had been providing legal assistance to a number of Vitsebsk activists who had received threatening letters from the Vitsebsk branch of the Russian neo-Nazi organization Russian National Unity (RNE). These letters had been sent to Uladzimir Bazan the editor of the *Vitebskiy Kuryer*, Alena Zaleskaya the former chair of the UCP regional office, Barys Khamaida a well-known opposition leader and several activists from the CCP BPF. Mr Svetsik, along with the local activists, repeatedly demanded a criminal investigation into the emergence of the threatening letters and spoke about the issue to the press, but for two years neither the militia nor the Vitsebsk regional KGB bureau did anything, arguing that the RNE was an unregistered organization.

On 31 March, 2009 Leanid Svetsik was charged with ‘incitement of inter-ethnic and racial hatred’ (Art.131 of the Criminal Code) and with ‘libel against the President of Belarus’ (Paragraph 2 of Article 367 of the Criminal Code). The regional prosecutor’s office later withdrew the latter charge for lack of evidence.

On 16 July Judge Halina Urbanovich of the Vitsebsk Regional Court found Leanid Svetsik guilty of violating Article 131 of the Criminal Code and fined him 900 ‘basic units’ (BYR 31,500,000). The court also ordered Mr. Svetsik to compensate Tamara Krasnova-Husachenka, the chair of the Vitebsk branch of the pro-governmental Union of Writers of Belarus, for moral damage with 1 million rubles (she had sought 7 million rubles from the defendant). The other victims in the case repeatedly questioned the validity of the court and declared that they did not consider Svetsik guilty. During the trial, Leanid Svetsik did not admit to his guilt and said that he was had been victimized by the KGB for his vigorous defense of human rights. Mr Svetsik appealed against the verdict but his appeal was dismissed by the criminal division of the Supreme Court.

5. The criminal case against Yauhen Volkau

In June, the Minsk Prosecutor’s Office began criminal proceedings against Yauhen Volkau, a member of the unregistered *Unification Church* (The Moonies) under Article 193.1 of the Criminal Code (the organization of a political party, public and religious association or foundation, which have not passed state registration in the manner prescribed by law, or participation in such activities). This was the first criminal case brought against an unregistered religious organization since 2006, when the Act took effect.

In August, the criminal case was dismissed. The letter received by Mr. Volkau, signed by S. Hrakhouski the senior investigator for particularly important cases and junior counselor of justice, reported: ‘as a result of the investigation the decision to terminate the criminal proceedings under Article 29 Paragraph 1.2, 250 — 251 of the CPC of the Republic of Belarus was made — in the absence of any criminal act.’

The proceedings against Volkau were soon resumed and on 30 December once again terminated. In an official notification, S. Hrakhouski wrote that ‘during the investigation all the evidence in the case was analyzed and this resulted in certificates for the destruction of a number of documents being issued because these materials demonstrated a distrust and a contempt for the Christian and Muslim faiths.’ At the same time there was no examination of the materials seized from Mr Volkau to confirm the incitement of religious hatred.

6. The criminal case against Dzmitry Smyk

On 6 November the Homel Centralny Court found Dzmitry Smyk guilty of evading military conscription (Article 435 of the Criminal Code) and punished him with a fine of 100 basic units (BYR 3,500,000). According to the indictment, D. Smyk ‘sought to preserve the comfort of his daily life... and abused his rights by evading military service, in vio-

lation of the recruitment procedures of the armed forces of Belarus.' However, Dzmitry Smyk, being a *Jehovah's Witness*, refused his military service on religious grounds and should have been granted alternative civilian service.

The case went to appeal at the Homel Regional Court. In his appeal, Dzmitry Smyk asked to acquit him for the lack of *corpus delicti*, referring to Article 57 of the Constitution, the second part of which guarantees a recruits' right to perform alternative service. On 9 December the Homel Regional Court Board for Criminal Cases of, chaired by Alena Tkachuk, rejected the appeal and upheld the verdict.

3

7. The criminal case against Ivan Mikhailau

On 20 December the militia arrested Ivan Mihailau, a 21-year-old member of the Messianic Jewish church *New Testament*. He was accused of evading military conscription under Article 435 of the Criminal Code and placed into custody in Zhodzina remand center.

Prior to that Mikhailau and his parents had repeatedly appealed to the local draft board requesting that he be assigned alternative civilian service on the grounds of his religious beliefs. On 31 December the case came before Minsk District Court.

The civil right to alternative service is guaranteed by Article 57 of the Constitution of the Republic of Belarus. The article states that 'it shall be the responsibility and sacred duty of every citizen of the Republic of Belarus to defend the Republic of Belarus. The procedure governing military service, the grounds and conditions for exemption from military service and the substitution thereof by alternative service shall be determined by the law.' Thus, the Constitution does not consider military service as unconditionally mandatory for all citizens, as it allows for exemptions from it, or or for it to be replaced with an alternative service. Therefore, it guarantees the right of citizens to perform their 'responsibility and sacred duty' to protect their homeland in the manner prescribed by the Constitution, including through alternative service.

In accordance with Article 4 of the Act *On the order of entry into force of the Constitution* of 15 March, 1994, the laws specified in the Constitution had to be passed within two years of the adoption of the constitution, i.e. by 30 March 1996. However, neither the 12th convocation nor the 13th convocation of the Supreme Soviet, passed the requisite laws and thus they failed to specify the grounds on which a person may refuse to do his military service and failed to set up any alternative national service. Article 57 of the Constitution remains unchanged since its drafting in 1994 and was adopted in a referendum in 1996 and 2004. There are no rules in the Constitution that would allow the Parliament to postpone the legislation to implement Art. 57 that makes it requisite upon them to set up a civil alternative to military service. Despite this, the National Assembly of the Republic of Belarus has not yet passed a law to implement this Article of the Constitution.

Moreover, the right to refuse to serve one's military obligations on grounds of conscience (religious and other beliefs) affects other individual rights guaranteed by the Constitution and international human rights conventions ratified by Belarus. Thus, in accordance with Article 31 of the Constitution, everyone has the right to decide on one's own religious beliefs, to profess any religion or profess no religion either individually or jointly with others, to express or disseminate one's religious beliefs and to participate in religious practices, rituals and ceremonies that are not prohibited by law. These rights are the norms of international law and guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which the Republic of Belarus is a signatory. The right of everyone to refuse military service on conscientious grounds is recognized by the UN Human Rights Council.

Meanwhile, the right of the citizens of Belarus to be allowed to choose an alternative to military service was confirmed by the decision of the Constitutional Court *On some issues of implementation of Article 57 of the Constitution of the Republic of Belarus* of 26 May, 2000, which ruled:

a) That citizens of the Republic of Belarus in accordance with the Constitution and the Law *On universal military duty and military service* (Articles 1 and 14) shall have the right, in particular in regard to their religious beliefs, to substitute military service for an alternative, which should be assured by an effective mechanism to provide for it. In this regard, it should be considered an immediate priority to adopt a law on alternative service or to make the necessary amendments to the Law '*On universal military duty and military service*' in order to establish the mechanism by which the right to alternative service shall be assured.

In the period before legislation has been passed to establish the grounds and conditions on which military service may be substituted with an alternative service and before it has been established how such

alternative service shall be served taking exceptional circumstances into account and also with regard to the practice of the relevant state bodies in accordance with arts 31, 57 and 59 other articles of the Constitution, conditions must be agreed upon to allow Belarusian citizens to fulfill their obligations to defend the Republic of Belarus in ways that shall not violate their religious beliefs.

b) While competent State bodies examine the issue of a citizen's liability for evading military service, it is necessary to determine whether by his actions a citizen is exercising his constitutional right to substitute military service with an alternative service due to his religious beliefs or due to conscientious objections that are not based upon religious conviction. In each concrete case the bodies in question should take all measures and perform a detailed study of all circumstances of the case both with a view to secure the rights and freedoms of citizens, who wish to perform their duty to defend the Republic of Belarus in other alternate forms and in order to prevent abuse by certain persons who, thus, intend to evade military service.'

4. The Right to the Freedom of Expression and to the Freedom of Information

There were no systemic changes to the right to freedom of expression or to the right to the freedom of information in Belarus in 2009. The previous problems and restrictions remained. The hopes for a liberalization of the media were not fulfilled and the state retained its total control of information.

There was cautious optimism at the beginning of the year due to concessions made by the Belarusian authorities at the end of 2008. The newspapers, *Narodnaya Volia* and the *Nasha Niva,* having not been in distribution for the past three years, returned to the state distribution networks, *Belsayuzdruk* and *Belposhta*. The authorities even allowed *Narodnaya Volia* to be printed in a Belarusian printing house. These steps were taken in compliance with the liberalization policy that the Belarusian authorities had agreed upon with other European countries. The expectation was that further liberalization would ensue and be applied to other private media.

The authorities also set up a coordinative council to oversee the field of mass information (in accordance with the Ruling of the Soviet of Ministers of 29 October 2008) which was seen as another step towards freedom of speech. Zhana Litvina, Chairperson of the Belarusian Association of Journalists and representatives from two non-state newspapers, Alena Mironava, chief editor of *Komsomolskaya Pravda v Belorussii* and Iosif Siaredzich, chief editor of *Narodnaya Volia*, were invited to the Council. The other members of this body were representatives from state institutions, government organs and state-owned media. The Council was headed by Pavel Yakubovich, the chief editor of *Sovetskaya Belorussiya*, the newspaper of the presidential administration. In accordance with the ruling of the Soviet of Ministers, the main aims of the Council were to coordinate relations between government bodies, civil associations and other media organizations; to ensure that the legal norms resulting from the Law *On mass media* were upheld; to consider questions arising from the application of this law and from other legislation regulating the media. The role defined for the Council was that of a true forum for discussion where the daily issues that concerned those who work in the media could be raised and this is why represent-

atives of non-state newspapers and journalist organizations accepted the invitation to join. The first sitting of the Council took place on 26 March. It discussed a number of questions and set the agenda for the next sitting. Pavel Yakubovich raised the question of formulating a code of journalistic ethics and Zhana Litvina raised the question of distributing non-state sociopolitical periodicals. The second sitting of the Council took place on 4 June. Natallia Dounar, the associate professor of the institute of journalism of Belarusian State University who headed the working group on the preparation of a code of journalistic ethics addressed the Council. In regards to the distribution of non-state periodicals, it was decided that members of the Council would address the heads of the state distribution networks *Belposhta* and *Belsayuzdruk* and recommend that they renew their relations with the editorial offices of those non-state sociopolitical periodicals that had problems with distribution. The next sitting of the Coordinative Council on mass media was scheduled for the middle of July. However, no more sittings were held in 2009 — the Council came to an end, though there was no official information about its dissolution or the suspension of its activities.

The Council had no real powers to resolve the problem of the distribution of non-state periodicals. After *Belsayuzdruk* and *Belposhta* were asked to renew their relations with the periodicals in question, the editorial offices of these periodicals submitted their proposals to these distribution networks, but little resulted. Only *Bobruyskiy Kuryer's* distribution problems were solved as it was included in the *Belposhta* subscription catalog and was sold at *Belsayuzdruk* newsstands. The newspapers *Volnaye Hlybokaye* and *Snplyus.Svobodnye Novosti Plyus* were allowed to be distributed through newsstands, but were denied distribution by subscription. *Niasvizhski Chas* could only be sold at newsstands, as well as the magazine *ARCHE*. *Rehiyanalnaya Hazeta* returned to the newsstands, but can only be subscribed to in the Minsk region. The periodical tried to put itself into the national subscription catalog, but *Belposhta* refused due to the 'inexpediency' of such business relations. *Gazeta Dlia Vas* also returned to the newsstands, but was not allowed to expand the area of its distribution via subscription (at present one can subscribe to it only in the Ivatsevichy district, though an attempt was made to spread its distribution via subscription to the Biaroza, the Pruzhany and the Drahichyn districts of the Brest region). The newspaper *Hantsavitski Chas* did not solve its distribution problems till the end of the year despite having struck preliminary agreements for its distribution by subscription and through sales at newsstands. The periodicals *Borisovskiye Novosti*, *Hazeta Slonimskaya*, *Intex-press*, *Novy Chas*, *Otdushina* and *Tovarishch* did not solve their distribution problems at all — these newspapers are still not distributed either by *Belposhta* or by *Belsayuzdruk.* Indeed *Tovarishch* still has to be printed abroad in the Russian city of Smolensk and printing was suspended twice in 2009. *Vitebskiy Kuryer*, a newspaper that was registered in the Russian Federation after the bankruptcy of the Belarusian newspaper *Vitebskiy Kuryer*, was denied distribution through state networks. The state monopolies usually justified their refusal to distribute private periodicals by the 'inexpediency' of such business relations. Different editorial offices received similar answers: 'As long as we are not legally bound to include a printed periodical in our catalog, the national business enterprise *Belposhta* reserves the right to choose the printed periodicals that it will include in the catalog of newspapers and magazines offered for distribution via subscription. For the aforementioned reasons, *Belposhta* considers it inexpedient to include the newspaper *SNPlyus.Svobodnye Novosti Plyus* in its subscription catalog.' (excerpt from the letter of Yury Komar, Director General of *Belposhta*, to Vasil Zdaniuk, chief editor of *SNPlyus.Svobodnye Novosti Plyus*).

State owned periodicals were granted distribution rights via subscription, whereas obstacles were placed in the way of distributing privately owned newspapers. In particular, the Slonim regional newspapers *Hazeta Slonimskaya* and *Otdushina* were denied the right to be distributed via subscription. At the same time, details of how subscriptions to the state district newspaper *Slonimski Vesnik* were being organized became known. Heads of state-run businesses and institutions in Slonim received a letter signed by Maryia Daniuk, the chief editor of the newspaper, requesting that they subscribe each of their workers to the newspaper 'in order to comply with the order of Iosif Pauliukevich, Chairman of the Slonim district executive committee (DEC), as well as to further the national and district development programs for the state-owned newspaper *Slonimski Vesnik* in regards to subscriptions in the second quarter of 2009'. Each official was ordered to report the total number of workers and the number of those who had subscribed to *Slonimski Vesnik* to the ideological department of the district executive committee by 25 March (according to the chief editor, these numbers were to be collated and presented to the head of the district). Mean-

while, at the end of the year it was discovered that some officials of the district executive committee had not subscribed to state periodicals, as a result of which Ihar Lapikau, the Chairperson of the ideological department of the Slonim DEC, sent a written demand for information about all the subscriptions to *Sovetskaya Belorussiya* and *Slonimski Vesnik* to the heads of the bureaus and departments in order to confirm this information at the local communications center and report to the chairperson of the Slonim DEC. Those who had not subscribed to these editions were to be put on a special list.

The reason the ideological departments wish to distribute the state press among the widest number of readers is because the main function of these periodicals is not to inform, but to propagate state propaganda. 'It is difficult to distinguish between ideologists and those who work in mass media, as they are pursuing a common goal. Representatives of the media are the closest comrades in arms and allies of ideologists and their importance increases day by day,' said Piatro Kirychenka, the Chairperson of the Homel regional executive committee at the June award ceremony for the best ideological work in workplaces of the Homel region. The disappearance of the border between the profession of journalist and that of the propagandist was also manifest in the appointment of Aleh Praliaskouski, the former Chairperson of the Main Bureau of Ideology of the Presidential Administration, to the position of Information Minister. State media continued to be subsidised by the state budget. In accordance with the Act *On the budget of the Republic of Belarus for 2009*, more than 193 billion rubles was spent on financing state media, more than 146 billion of which was spent on TV and radio with 20 billion spent on periodicals and printing houses and more than 25 billion 'on other mass media expenditure'. Moreover, state-owned media were granted many other privileges, in particular, the Belarusian TV channels ONT (limited company *Second National TV Channel*) and STV (limited company *Capital's Television*), who had their tax privileges extended by A. Lukashenko's decree #478 of 25 September 2009. These media companies were freed from paying VAT and taxes on their profits from advertising and from other business ventures. In accordance with presidential decree #523 of 23 October 2009, the National State TV and Radio Company and its subsidiaries (the regional TV companies *Homel*, *Vitsebsk*, *Hrodna*, *Brest* and *Mahiliou*) were exempted from VAT and the profits tax (except for the VAT that is levied on goods imported into the Republic of Belarus) from 1 October 2009 till 31 December 2012. The decrees stated that the money received as a result of these tax exemptions had to be spent on purchasing the rights for broadcasting audiovisual works and for creating programs. The journalistic community regularly raised the matter of the unequal conditions under which state-owned and private media operated and the discriminative approach of the state to this issue.

On 8 February, the Law of the Republic of Belarus *On mass media* came into effect. It had been rushed through parliament in spring 2008 without preliminary consultation with journalists, or with other media experts, both foreign and domestic. Some provisions of this law were criticized by and raised concerns in journalist circles immediately after its adoption. The Belarusian Association of Journalists determined that the most repressive conditions were: the required registration of internet sites and control of the internet by the Ministry of Information and the Prosecutor's Office; the obligatory re-registration of all media after the Law came into effect; the considerable extension of the legal grounds for liquidation of media by the authorities and the ban on journalists working with foreign media without official accreditation. At the same time, there were some positive changes. In particular, the registration procedure for new printed media was simplified.

The effect of the law was analyzed over the course of the year and the positive and negative effects of the new Law on the operation of the media were noted. One positive change was the practical lack of obstacles to the re-registration of existing media. All those who presented the necessary documents in time were re-registered. As for the registration of new printed media in the first half of the year many papers registered. In the spring the private newspaper *Uzgorak* (distributed in the town of Horki in the Mahiliou region) obtained state registration; in summer, so did the newspapers *Piunaya* and *Brestskiy Kaleydoskop* and there were also a number of advertising papers. However, the situation changed in the beginning of autumn when political newspapers began to face obstacles to registration. This happened as a result of the political changes following the cessation of the negotiations between the Belarusian authorities and European institutions. As a result, the authorities lost interest in demonstrating 'liberal changes' furthering the freedom of expression. As a result, many papers were denied registration including: *Mahiliouski Chas*, *Salihorsk Plius*, *Novaya Gazeta Bobruyska*, *Maryinahorskaya*, *Prefect Plius* (distributed in Hlybokaye, the Vitsebsk region), *Khimik.Dva Goroda* (Navapolatsk). In October, the Ministry of

Information refused to register the regional private newspaper *Mahiliouski Chas* because Halina Ilyina, its chief editor, did not have a masters degree (*Mahiliouski Chas* is a sociopolitical periodical that had been issued with a printing run of 299 copies — the maximum circulation that is legally allowed for an unregistered periodical — for several years before the registration attempt). The editorial office changed the editor and made another attempt to register, but was denied again for a different reason. The private newspaper *Salihorsk Plius* was twice denied registration; the first time for registering its address in residential premises and the second for its stated subject matter It wanted to register as a sociopolitical and leisure periodical with such topics as 'the state', 'education' and 'business', but the Ministry of Information stated that such topics contravened the norms of state standards, according to which the notion of a 'leisure periodical' is that of a periodical that contains generally accessible information about everyday life, amateur performances and different kinds of hobbies'.

Despite the restrictions placed on the internet by the Act *On mass media*, the fact that the government had ceased to actively regulate the internet was seen as a positive development. However, at the end of the year the state returned to it's previous policy of controlling the internet in Belarus. On 14 December the editorial board of *Nasha Niva* received a copy of the draft ruling by the head of the state on the use of the internet in Belarus. This document stated that control was to be given to and shared between the Council of Ministers and the operative-analytical center of the Presidential Administration. In accordance with the draft decree, the operative-analytical center was to be given direct supervisory powers over the country's internet providers, whose right to provide services could be taken away with a ruling from the Council of Ministers. The document also made the operative-analytical center responsible for restricting access to any information banned under Belarusian legislation, as well as for registering Belarusian domain names and for policing internet service providers, ensuring that they adhere to the law. The draft decree also set out the agenda for the Council of Ministers and the operative-analytical center in the coming year. In particular, the decree proposes procedures for registering on-line mass media, as well as for identifying internet users on public access terminals. Between 21 and 22 December the Council of Ministers debated the draft law and the objections to it raised by independent experts. As a result, the most restrictive clauses were either removed or changed.

Yet, the decree retained the clauses that would allow the government to maintain strict control over internet in Belarus, including the necessity to register all internet service providers, the obligation to identify all computers connected to the internet and the right to hold personal data on all users of the internet and on all services provided via the internet in places of public access such as internet cafes. Though internet media providers were not specifically mentioned in the decree, its implementation affects them, as sites that provide banned or undesirable information may be blocked. The draft decree was passed to the head of the state in order to be signed..

In 2008 the KGB bureaus in Hrodna and Brest brought civil charges against people for the possession of published materials that they considered to be extremist. The materials that resulted in the instigation of such cases had been confiscated from Belarusian citizens by border guards over the previous three years. In 2009 this practice was stopped. The majority of the cases were dropped before coming to trial or thrown out of court and the declaration that the confiscated materials were extremist was reversed. Only one such decision was left standing. This verdict concerned 3 CDs from the concert *Solidarity with Belarus* that had been held in Warsaw in 2006, 6 CDs with a recording of the Polish documentary *A Belarusian Language Lesson* and 7 CDs with photos from a protest that had taken place in Kastrychnitskaya Square in Minsk in March 2006. A trial concerning 10 copies of the sociopolitical magazine *ARCHE* that had been confiscated on the border at Brest on 24 October 2008 was postponed to 2009. On 30 December 2008 Leanid Dziadkou, the chairperson of the Brest KGB bureau, brought charges against the person who was found in possession of this magazine in which he stated 'Preliminary investigations established that the magazines contained information that discredits the activities of the state of the Republic of Belarus; materials that cause tension and confrontation in society, encourage the organization of mass riots and thus present a danger to the security of the Republic of Belarus'. According to the lawsuit, four such inflammatory articles in editions #7-8 of *ARCHE*. These articles were *Parliamentary Elections: Belarusian Boredom, European Intrigue?* by V.Silitski, *Explosion and Stink: Belarusian Mini-Auschwitz* that was written by the editorial staff of the magazine; *Minsk maneuvers. Lukashenko uses elections as a weapon in negotiations with the EU* by B.Yarabik and A.Rabagliatti and *The Memory of the Victims and the Butchers* (a review by A.Rasinski on Andrzej Waj-

da's film *Katyn*). On 25 February 2009 Tatsiana Miraniuk, Judge of the Maskouski district court of Brest found these publications to contain 'extremist materials that should be destroyed'. However, on 7 May on appeal, a panel of judges from the Brest regional court returned the case to the Maskouski district court for a retrial. On 28 May, during negotiations between the two parties, the KGB demanded that an expert evaluate the contents of the publications in question. In the middle of June, when the results of the evaluation were published, the Brest regional KGB bureau dropped the charges. On 25 June the Maskouski district court of Brest threw the case out 'because the plaintiff dropped the charges'. After this, there have been no other cases regarding the possession of extremist materials or publications.

20 October marked the fifth anniversary of the journalist Veranika Charkasava, who spent the last years of her life working for *Salidarnasts*, a private newspaper. She died of multiple knife wounds in her own apartment in 2004. Since then the investigators from the Minsk prosecutor's office have failed to find those responsible. In February 2007 the case was dropped. The investigation had concentrated on the theory that Veranika had been murdered by burglars though her colleagues had good reason to think that she had been killed by a professional killer who had staged a break-in. In October, the Belarusian Association of Journalists announced a Veranika Charkasava prize for journalists.

The criminal investigation into the disappearance of the ORT cameraman Dzmitry Zavadski was also dropped. Zavadski was kidnapped on 7 July 2000. The investigation was suspended on 31 March 2006 'due to the impossibility of locating the missing person'. In November 2007 A.Sytsko, the Prosecutor of the Department for Supervision of Investigations in Public Prosecution Bodies, informed Mr Zavadski's mother that 'the investigation to find the whereabouts of Dz.A. Zavadski or his body and to find those responsible was still ongoing. If any new information were to be received, the case would immediately be resumed.' A. Lukashenko set forth his version of the reasons and circumstances for the disappearance of Dzmitry Zavadski in an interview with the Russian newspaper *Zavtra* (#24 of 10 June 2009).

'Do you want to know the truth? There was a paramilitary group in Belarus led by Ihnatovich. They were well-trained. They used to be members of a USSR special-mission unit. These guys went to Chechnya during the war and fought for the Russians and then they returned

home. Sharamet [*an ORT reporter, who was both a colleague and friend of Dzmitry Zavadski — Ed. Note*] and Zavadski came up to them to shoot a story for Russian TV. Their story reported that these Belarusian citizens had been fighting on the side of Chechen separatists against federal troops. Sharamet was lucky to get away, whereas Zavadski was caught. They started off by trying to frighten the guy: 'Why have you been slandering us?' But then they killed him. Ihnatovich got a life sentence and is sitting in one of our penal colonies.' The members of Ihnatovich's gang were found guilty of the abduction, but not of the murder of Dzmitry Zavadski, in 2002. Two of them, V.Ihnatovich and M. Malik, received life sentences. However, A.Lukashenko expressed his conviction that Dz. Zavadski had been killed, though the search for his body still continues.

Throughout 2009 journalists were systemically harassed, they faced obstruction from the state in reporting the news, they were arrested, beaten and they were fined. One of the forms of this harassment was the threat of criminal proceedings. On 29 April, the KGB bureau in Hrodna issued a warning to the journalist Yan Roman that he was in violation of Article 369-1 of the Criminal Code, 'discredit to the Republic of Belarus'. The KGB believed that a number of the journalist's reports submitted to *Magazyn Polski na uchodstwie* and to *Radio Racyja* concerning the economic plight of many local firms discredited the country. The document also stated that the journalist could be held criminally responsible in the case if he continued violating the law.

On 24 February two journalists, Aleh Razhkou and Dzmitry Karmazin, were fined by Maryna Damnenka, the Judge of the Centralny district court of Homel, for being in 'violation of the order against the holding of mass events' though all they had been doing was report on a campaign in defense of the mother-tongue, held on 21 February.

On 29 May the Biaroza district court (in the Brest region) issued Tamara Shchapiotkina, a correspondent for *Radio Racyja*, with an oral warning for being in 'violation of the order against holding mass events'. The journalist had been arrested on 26 April making her way to the *Candle of Memory* campaign which was being held to mark the anniversary of the Chernobyl accident and which she had been intending to cover.

On 17 April in Kletsk, the militia detained two journalists, Nastassia Krauchuk and Katsiaryna Tkachenka for making a program about the suspension of repairs to a local Orthodox Church. Siarhei Panamarou,

the editor of the regional bulletin *Boiki Kletsk* and his son Uladzimir, were also arrested with them. The detainees were held at the militia station for several hours, after which their video equipment and the cassettes with the material they had already filmed were confiscated. Their equipment was returned after a complaint from the Belarusian Association of Journalists to the Kletsk district prosecutor's office.

On 5 September officers of the Orsha militia station arrested a number of journalists who were covering *Orsha Battle 2009,* a festival of poet singers. The first detainees, Palina Stsepanenka and Viktar Tratsiakou, were held in the Orsha militia station, where they were charged with not wearing reflective bands. Larysa Shchyrakova and some other detainees were left at the Kokhanava railway station. Two other journalists, Alena Stsiapanava and Ivan Shulha, were stopped in their car by a militiaman who said that vehicles were not allowed to be driven to the festival as a mine had been allegedly discovered in the field at Krapiuna. The militia also stopped the car of Yury Koptsik, the coordinator of the festival of singer poets, together with Ivan Shulha and Yury Koptisk, who were held at the local militia station for three hours.

On 16 December Nastassia Shamrei, a journalist from the newspaper *Nasha Niva*, was arrested near the Embassy of Iran while covering a protest in defense of the ten gay Iranian nationals who had been sentenced to death. The journalist was held at the Savetski militia station together with those who had been arrested during the protest, where the militia took down her passport details and her Belarusian Association of Journalists membership number before releasing her.

The most blatant violations of journalistic rights took place during mass events that were held on 9 and 16 September and 16 October. On 9 September a protest rally *West-2009* was held in Kastrychnitskaya Square in Minsk, by activists from pro-democracy organizations against the arrival of Russian troops for joint military operations. Despite the fact that the journalists were wearing press passes they were attacked by plain-clothed militiamen Uladzimir Kostsin, a cameraman, had his camera destroyed. The militia tried to grab photo cameras from the hands of Artsiom Liava and Vasil Siamashka and Yuliya Darashkevich, a photo correspondent from *Nasha Niva*, was knocked down.

On 16 September journalists covering a demonstration of solidarity to mark 10th anniversary of the abduction of Viktar Hanchar and Anatol Krasouski were attacked including correspondents from the *Associated Press*, the Russian *BBC*, *Reuters*, *France Presse*, *Radio Liberty*,

Charter'97, *Nasha Niva*, *Belhazeta* and *BelaPAN*. Plain-clothed militiamen tried to prevent the journalists from documenting the brutal arrests of those participating in the rally by covering their video and photo cameras and by threatening them with physical violence showing no regard for their press passes.

The militia were even more violent towards journalists during the solidarity demonstration held on 16 October. It was almost impossible to film or photograph anything as each correspondent was surrounded by two to three militiamen, who covered the camera lenses, pushed the journalists away and used physical force.

On 23 September the Belarusian Association of Journalists complained to the Minsk Prosecutor's Office, the Ministry of Internal Affairs (MIA) and the militia headquarters in Minsk about the obstruction of those journalists' professional duties and the use of physical force against them. The organization demanded the identification and punishment of those who had issued and executed the unlawful orders. 14 photos were attached to the document as evidence that the militia had obstructed the work of the journalists. The main bureau of the MIA's internal policing department (a special service that investigates legal abuses by the militia and armed forces) was assigned to investigate the complaints. On 30 October the Belarusian Association of Journalists received a letter signed by Vital Kisterny, head of the third bureau of MIA's internal policing department, containing a short statement that the complaint was being 'considered by the internal policing department. We have established that the main militia station in Minsk has undertaken a thorough investigation into your complaints, the results of which you have already been informed of in accordance with the law'. However, no letters from the Minsk city executive committee were ever received, even though the officials insisted that the letter had been sent on 9 October. By the end of 2009, there was still no information as to whether the legality of the actions of the militia during these demonstrations had been investigated and to whether a letter in reply to the complaints had been sent. Though, during this time the journalists received an unofficial kind of answer: on 22 October Yauhen Paludzen, Deputy Minister of Interior, stated that legal relations between the militia and journalists at street protests were to be changed. In future, press-officers of the Ministry of Internal Affairs would attend mass events wearing blue vests and representatives of the press had to address them regarding all relevant issues. The militia who were to negotiate with

participants of illegal demonstrations would be dressed in red vests. The deputy minister also assured that the MIA had taken appropriate measures to ensure that the militia did not hinder the work of journalists. He also made reference to German legislation that bans journalists from photographing or filming militia officers or participants of mass events in closeup.

Throughout 2009, journalists of independent periodicals regularly faced the refusals of officials to provide information. This was often due to the intransigence of local governments and was rarely justified by any legal reason. The restrictive use of accreditation also remained a contentious issue.

Maryna Koktysh, a journalist for the newspaper *Narodnaya Volia*, was deprived of her accreditation by the Chamber of the Representatives without an explanation. In 2008 she went to court in order to regain her professional rights, but the case was twice thrown out. At the beginning of 2009, she was again denied accreditation by the secretariat of the National Assembly's Chamber of Representatives. In the denial it was stated that her application had been passed to the 'appropriate department' who had decided to deny her access to 'the grounds of the administrative complex on 'Savetskaya Street, 11' (the address of the Parliament building). The journalists went to court to appeal against this denial. On 13 February Alena Rudnitskaya, the Judge of the Maskouski district court of Minsk, refused to consider the case 'because the applicant has no right to appeal to the court against the decision'. Soon afterward, the Supreme Court turned down the appeal of Iosif Siaredzich, chief editor of *Narodnaya Volia* and Maryna Koktysh against this verdict. 'The question of journalist accreditation is beyond the purview of the court and under the present legislation of the Republic of Belarus, the courts possess no powers to consider appeals against denials of accreditation. For these reasons the judge was correct in refusing to allow the case' states a letter dated on 30 November signed by A. Fedartsou, Deputy Chairperson of the Supreme Court. The journalist was informed back in 2007 that the decision to deprive her of accreditation had been taken by the presidential security service.

In June, the Hantsavichy district executive committee once again refused to accredit journalists from the private regional newspaper *Hantsavitski Chas*. Eduard Brokarau, chief editor of *Uzgorak* t, a private newspaper in Horki, was denied accreditation at the Horki district executive committee in October. The explanation for the denial that was

signed by Mikhail Anikeyeu, the Head of the Gorki district, stated that the state newspaper *Leninski Shliakh* and the radio program *Holas Horatskaha Krayu* had already received accreditation at the district executive committee and therefore it was unnecessary to give media accreditation to any other organization. In September, the Baranavichy military enlistment office refused to accredit correspondents of the private newspaper *Intex-press*. In his letter of 10 September, Colonel Mikhail Sots informed the editorial board that in accordance with Article 173 of the *Instruction for the organization of ideological work within the Armed Forces*, adopted by order of the Minister of Defense of 3 January 2006, district military enlistment offices 'have already accredited numerous representatives from state media companies from all the appropriate districts. This is our basis for denying your representatives accreditation.' The publication had addressed the military enlistment office with the request to accredit its representatives after Liudmila Prakopava, a photo correspondent, was denied access to an airbase for a ceremony to commemorate two Belarusian pilots who had been killed at an airshow in Poland. The newspaper was regularly denied access to information. On 10 March Uladzimir Vesialou, the chief engineer of the city construction bureau of Baranavichy, told Zinaida Drozd that he did not talk to independent journalists. Zanaida Drozd was writing an article about the complaints of the city's medics and teachers over the construction of a multistory building on marsh land. On 13 March, Tatsiana Latyshava, the head of the bureau of labor, employment and social defense in Baranavichy, refused to provide journalist Ina Hanchar with information about the unemployment rate in the city and stated that she had already faxed all the necessary data to her editorial office. Ina Hanchar complained to Tatsiana Zhytko, the Chairperson of the ideological department, about the incident, but nothing changed. On 24 February journalist Liudmila Prakopava submitted a request to the ideological department of the Baranavichy CEC for information from the trade department about the number of the commercial establishments that had lost their licenses due to a groundless increase in price, but received no answer.

The majority of regional independent periodicals had similar problems. On 24 Febraury Vital Rusilevich, the Chairperson of the Slonim district department for emergency situations, refused to answer the questions of a correspondent for the local newspaper *Hazeta Slonimskaya* about what his offices were doing. He explained his refusal by

saying that the authorities had told him orally not to do so. On 21 May, a correspondent for the same publication, Siarhei Chyhryn, was refused admittance to a meeting between local entrepreneurs and Anatol Fidryk, the Deputy Chairperson of the Slonim district executive committee. Maryia Yurko, a correspondent for the Luninets newspaper *Inform-progulka*, was refused entry to the assembly where Kanstantsin Sumar, the governor of the Hrodna region, was to introduce the new acting head of the local administration. The head of the ideological department justified the denial on grounds that *Inform-progulka* lacked accreditation from the district executive committee. Katsiaryna Kurlovich, a correspondent for *Hantsavitski Chas*, was denied entry to a celebration of Mothers' Day, 14 October, by Uladzimir Stoliar, the Chairperson of the Hantsavichy district executive committee. She was stopped at the entrance by Iryna Hurskaya, the manager of the local community center and by Maryna Mukha, an officer from the executive committee's ideological department. The order to show her the door was issued by Mikalai Zazheka, the administrator of the Hantsavichy district executive committee. On 14 July Siarhei Hara, the head of the Zaharadny department of the Barysau district militia, refused to answer the questions of Ales Mikalaichanka, a correspondent for the independent newspaper *Borisovskiye Novosti* despite having previously agreeing to do so. The official stated that ideologists had forbidden him from talking to this particular independent publication. A similar incident occurred on 15 June, when officers of the Center for propaganda and education from the department of emergency situations in Barysau refused to disclose information on the weekly number of fires.

In June the Union of Poles in Belarus (UPB), a pro-governmental organization headed by Jyzef Lucznik, refused a number of journalists entry to cover the proceedings of their electoral assembly. Kazimierz Znajdzinski, the Chairperson for the Hrodna city UPB branch, ordered the militia to stop representatives from *Gazeta Wyborcza*, *Rzeczpospolita*, *Radio Racyja* and the TV channel *BelSat* from entering the local community center. Khrystsina Marchuk, a correspondent for *Hazeta Slonimskaya*, Yan Roman a radio journalist, Siarhei Astrautsou, a journalist for *Radio Liberty* and Piatro Kastsinski, a correspondent for *Rzeczpospolita*, were also banned from attending this organization's assembly that was held on 12 September. The militia would not allow unaccredited journalists into the hall of the *Hrodna Azot* enterprise where the assembly took place. Some of them were even banned from talking to

the participants of the event outdoors. The militia operation was headed by Leanid Bet, the chief of the Kastrychnitski militia station in Hrodna.

On 30 June Sviatlana Barouskaya, the press secretary for the Ministry of Internal Affairs, refused to talk to Dzmitry Paniamonau, a correspondent for the *European Radio for Belarus*. He wished for clarification of some remarks made by Aleksandr Lukashenko on 28 June, during a meeting with the heads of various law enforcement agencies. Criticizing the work of the Belarusian militia, Mr. Lukashenko had stated that there had been 78 cases where militia officers had entrapped citizens into breaking the law. Mr Paniamonau asked Ms. Barouskaya to give a detailed account of some of these cases. However, she not only refused to present to him with such information, but also refused to talk to him at all, saying she was busy.

The tendency of Belarusian state organs to conceal information from both journalists and society could also be seen in the autumn. Between the end of October and the beginning of November the country was literally overwhelmed by rumors about the swine flu epidemic and yet the authorities denied that there were any problems. In the absence of any official information rumors ran wild and ever more outrageous predictions were given credence.

On 16 November, the Ministry of Information issued an official warning to *Nasha Niva* and on 17 November it did so to *Komsomolskaya v Belorussii* for publishing inaccurate information about swine flu. According to the Ministry of Information, the number of those who had fallen ill and died from swine flu that *Nasha Niva* had published in the article *Concealment of Flu Causes an Epidemic of Panic* was wrong. *Komsomolskaya Pravda v Belorussii* received its warning for an article entitled *Relatives of an ill Homel citizen: Our daughter is on artificial respiration and there are no medicines in the hospital*, in which it stated that there was no *Tamiflu* in the Homel tuberculosis hospital.

Written warnings remained an instrument with which the Ministry of Information could pressurize journalists and an efficient means of influencing editorial policy. Such warnings were often issued for critical articles on important issues of public interest.

On 17 November, the private newspaper *Narodnaya Volia* received a warning for publishing an article entitled *Don't Interfere with Those Who Promote Liberty* that had been submitted by a citizen from Minsk and printed in the *Opinions* column in editions #169-170 issued on 30 October and the 2 November 2009. The Ministry of Information regard-

ed it as propaganda advocating extremist activities. The author of the article voiced his opinion about the pointlessness of participating in the upcoming presidential elections. About a month later, on 24 December, the newspaper received another warning. This time the editorial staff received it for publishing in the issue of 11-14 December, a list of *Belsayzdruk* newsstands in Minsk where one could subscribe to their newspaper at a lower price, for what was called a 'reduced tariff'. The Ministry of Information considered the use of that particular phrase as unlawful. In accordance with Article 51, point 2.2 of the Law *On mass media*, the issue of two or more warnings during a year may entail the suspension of the offender's media activities.

On 30 September, the administration of the Belarusian FM radio station *Autoradio* received a written warning from the Ministry of Information for 'failing to implement the creative guidelines for broadcasts that covered its particular type of programming and the topics it presented.'. The reason for the warning was the broadcasting of *EuroZOOM*, a joint program made by *Euroradio* and *Autoradio* during the summer that was sponsored by the European Commission.

However during the year, warnings were often issued for purely technical reasons. On 30 October the Ministry of Information warned the owner of the independent newspaper *Volnaye Hlybokaye* for publishing an advertisement in Russian without promptly informing the ministry that that particular language was to be used in that edition. The problem was that *Volnaye Hlybokaye* was registered as a Belarusian-language publication, but nonetheless published an advertisement in Russian in their edition of 3 to 17 September.

Throughout 2009, the accreditation by the Ministry of Foreign Affairs of foreign media and any Belarusian journalist who worked with them remained a major issue. And it was even more so after the new Law *On mass media* came into effect, as it was now unlawful to work as a journalist without accreditation.

It was generally regarded as a positive step when the *European Radio for Belarus* was allowed to open up an office in Minsk for a period of one year, in accordance with ruling#1463 of the Council of Ministers signed by the Prime Minister Siarhei Sidorski on 11 November. The Ministry of Foreign Affairs also issued accreditation to 12 journalists and staff members of the radio station.

During the same period, in 2009 the authorities refused three times to register the Belarusian offices of the satellite TV channel *BelSat*. The first registration attempt was made on 20 December 2008, when the appropriate documents were submitted in order to register the offices of *BelSat* as a part of Polish National Television (TVP) in Belarus. In February, the Ministry of Foreign Affairs (MFA) stopped the registration proceedings referring to a number of mistakes in the documentation. They stated that registration could be resumed after their correction. In July, the MFA once again turned down the application and claimed that *BelSat* had failed to submit an important document with their application. The TV channel didn't give up and on 9 October the documents were submitted for the third time. After two months, on 8 December, the MFA once again refused to register the *BelSat* offices. In the explanation for the refusal signed by V.Varanetski, the Deputy Minister of Foreign Affairs, it was stated that according to the ministry's information, the Belarusian prosecutor's office had issued warnings to a number of Belarusian journalists for working for *BelSat* without official accreditation and this was a violation of the Law *On mass media*. For this reason the *BelSat* offices were refused accreditation. The situation is absurd: the TV channel was stubbornly denied registration, so its journalists had to work without it and were thus issued with warnings. This then served as the final justification for withholding registration. The journalists who were warned by the prosecutor's office for working with *BelSat* were Tatsiana Bublikava (issued with a warning on 24 February) and Aleh Razhkou (received two warnings — one at the end of February and the one on 22 September),who were both from Homel and Volha Sharapkina (21 August) and Vadzim Arshynski (cameraman and photographer, warned on 28 September) from Mahiliou.

On 4 November, Agnieszka Romaszewska the *BelSat* manager was denied a Belarusian visa and was thus the next day unable to attend the Minsk Forum XII to which she had been invited as a guest of honor.

Other journalists who worked with foreign media were also denied accreditation. At the end of January, the Belarusian Ministry of Foreign Affairs denied accreditation to two *Radio Racyja* correspondents from Hrodna on the basis that they had previously been working without it. Yan Roman from Hrodna was denied accreditation on the 3 March and Viktar Parfionenka, was denied it on 25 September. On 25 November Tamara Shchapiotkina, a journalist from the town of Biaroza (in the Brest region), was also issued with an official prosecutorial warning for working for *Radio Racyja* without accreditation. Dzmitry Kisel, a journalist from Brest, was threatened and told to stop working for *Radio Racyja*

due to a lack of accreditation. On 3 March the Ministry of Foreign Affairs rescinded the accreditation of Andrei Pachobut, a journalist working for the Polish newspaper *Gazeta Wyborcza*, allegedly for his biased coverage of events in Belarus and for negative remarks made about the head of the state. On 15 August, Aleksey Malkov and Yury Babenko, two Moscow journalists from the television channel NTV who were shooting a documentary about well-known activists who had disappeared in Belarus, were deported due to their lack of accreditation.

According to the Belarusian Association of Journalists, the Belarusian prosecutor's office issued 15 warnings, both oral and written, to journalists for working with foreign media without accreditation during the first eight months after the Law *On mass media* came into effect. On 9 October the association, due to the restrictive interpretation of the law, addressed the Prosecutor General with a request for a review of the establishment's attitude towards journalists. As they pointed out, neither the Law *On mass media*, nor the Ruling *On the accreditation of journalists for foreign media in Belarus* limited the right of any Belarusian citizen to gather and disseminate information, to prepare informational materials or to offer them for publication to the media whether it be domestic or foreign. At the end of November, the BAJ received a reply that stated that a warning could only be appealed against by those who had received it and that the regulation by the prosecutor's office of the media was in accordance with both the law *On the prosecution of the Republic of Belarus* and the law *On mass media* (the letter was signed by Pavel Radzivonau, the head of the department for the supervision of civil rights and liberties).

During the course of the year, The European community paid particular attention to the right of free speech in Belarus and it was one of the criteria for evaluating the progress made by the Belarusian authorities. As stated by Jacek Protasiewicz, the head of the European Parliament's delegation on relations with Belarus, while in Minsk on 20 February, 'it is one of our priorities and we won't ignore it'.

Between 20-24 September, a group of experts from a number of international organizations concerned with the media and the freedom of the press visited Belarus. They came to meet with both media organizations and the Belarusian authorities in order to exchange opinions and to evaluate the overall state of mass media in Belarus, as well as the freedom of the press, the freedom of expression and the ease of access to information. Following this visit, the organizations whose rep-

resentatives had taken part published a joint statement that made a number of recommendations to the Belarusian authorities in order for them to improve and revitalize both state and private media in Belarus, as well as increase the media's professionalism, pluralism and social regard in a democratic society.

Their recommendations were as follows:

1) Editorial independence of state and non-state media had to be be respected and journalists should not be targeted for carrying out their professional duties.
2) Non-state media should be allowed to operate under fair economic conditions, which include the right to be distributed without restriction or discrimination.
3) The rules for the accreditation of journalists should be transparent, unambiguous and fair and allow all journalists access for to information of public interest.
4) Journalists should not be obstructed from reporting public events and demonstrations;
5) The allocation of broadcasting licenses and frequencies should be defined by legislation that complies with international standards and should be overseen by a fully independent regulator to ensure pluralism in the broadcasting sector;
6) Both the Law *On the media* and the Law *On Counteracting Extremism* as well as the articles in the Criminal Code that relate to defamation should be reformed to bring them into line with international standards regarding press freedoms and the freedom of expression
7) The authorities should ensure the fair treatment of organizations representing journalists;
8) Their should be a continuing dialogue between the media, the authorities and civil representatives in order to improve media policies and practices.

The organizations that signed the statement were Article 19, the Committee to Protect Journalists, the Danish Union of Journalists, the Index on Censorship, the International and the European Federation of Journalists, International Media Support, the International Publishers' Association, International Pen, the International Press Institute, the

Open Society Institute, PressNow, Reporters without Borders, the World Association of Newspapers and News Publishers. It was also endorsed by the Civil Rights Defenders though their representative, Joanna Kurosz, had not been issued a Belarusian visa and therefore had been unable to come to Belarus.

Nonetheless, despite some minor improvements to the freedom of expression, the recommendations were not implemented. The authorities continued to control public information and their policy towards non-state media and journalists remained tough and discriminative.



Prisoner of conscience Artsiom Dubski. He was sentenced to 1 year in prison by Asipovichy District Court on 7 July.



Prisoner of conscience Maksim Dashuk, sentenced to 15 months in a maximum security prison by Minsk Maskouski District Court on 15 June.



Human rights activist Leanid Svetsik, fined BYR 31,500,000
by Vitsebsk Regional Court on 16 July.



Human rights activists Ales Bialiatski and Leanid Svetsik
leaving the courtroom after the verdict.



Over the course of the year politically
motivated disappearances remained
a major issue for the Belarusian
pro-democratic community.
Solidarity demonstration.
7 May. Kastrychnitskaya Square.
Minsk.



Solidarity rally, marking the 10^{th} anniversary of Yury Zakharanka's
disappearance. 7 May. Kastrychnitskaya Square. Minsk.



‘Political draftee’ Ivan Shyla taking the oath at a military unit in the village of Mezhytsa, Lepel District, Vitsebsk Region. 7 February.



‘Political draftee’, Young Front activist Zmitser Khvedaruk taking the oath. Zhodzina.



‘Political draftee’ Franak Viachorka appeals against his illegal drafting at the Inter-garrison Court, Minsk.



Youth activists hold protest rally against political conscription. Minsk. Independence Square.



BRSM activists marking the 89th anniversary of Komsomol by a performance in Kamsamolskaya Street in Minsk. 24 September.



Parade in Minsk on the Day of the Republic. 3 July.



‘Action of Love’, staged by Young Front activists. Minsk. 14 February.



Dispersal of Young Front’s rally on St. Valentine’s Day. 14 February.



Freedom Day in Minsk. Plaza outside the National Academy of Sciences.
25 March.





‘Chernobyl Shliakh’, marking the 23rd anniversary of the Chernobyl Disaster.
Minsk. 26 April.





Communist supporters by the Lenin monument, marking the anniversary of the October Revolution. Minsk. Independence Square. 7 November.



Rally, marking the anniversary of the referendum, which replaced the national state symbols with the Soviet insignia. Minsk. 14 May.





Dispersal of a protest rally 'No to Russian Occupation!' against the sending of Russian troops to Belarus. Minsk. Kastrychnitskaya Square. 9 September.





16 September. After many years of isolation, Lukashenko for the first time is invited to an EU country. Meeting the Lithuanian President Dalia Grybauskaite.



Memorial action, marking the 10th anniversary of the disappearance of Viktar Hanchar and Anatol Krasouski. Minsk. Kastrychnitskaya Square. 16 September.



Law enforcement personnel impeding the coverage by journalists of the dispersal of Solidarity rallies and the arrests of the participants. Minsk. September-October.





Press-conference of Amnesty International representative Ms. Heather McGill (center) with the participation of human rights activist Valiantsin Stefanovich and the mother of Andrei Zhuk, a convict on death row. Minsk. 10 November.



Human rights activists before they submit a petition against the death penalty in Belarus. The Presidential Administration in Minsk. 10 December.



Human rights activists Ales Bialiatski, Uladzimir Labkovich and Valiantsin Stefanovich at the Supreme Court during their appeal against the state's refusal to register 'Nasha Viasna'. 12 August.



A rally held as part of the 'Stop-193.1!' campaign to revoke criminal liability for illegal NGO and party membership. 'Santa Clauses' leaving the General Prosecutor's office. Minsk. 14 October.



The national flag against the background of the Palace of Trade Unions in Minsk. Kastrychnitskaya Square. 14 May.



The state flag with the ‘Farny’ Jesuit Monastery in the background. Hrodna. March.

5. Discrimination

— Political discrimination

Despite the fact that the Belarusian Constitution and other laws, as well as international agreements, prohibit discrimination on political grounds, in 2009 the Belarusian authorities continued their policy of harassing political opponents, including members of opposition political parties, independent trade unions and democratic youth organizations.

According to Article 14 of the Labor Code of the Republic of Belarus, ‘discrimination, being the restriction of employment rights or of the issuing of any benefits based on gender, race, national origin, language, religious or political beliefs, membership or non-membership of trade unions or other public associations, property or official status, physical or mental disabilities that do not impede a person in the course of his employment, is prohibited.’ One of the reasons for the exclusion of Belarus from the EU Generalized System of Preferences (June 2007) was its discrimination against members of independent trade unions. In order to restore its trade privileges the Government had to implement the 12 recommendations made by the International Labor Organization (ILO) and in particular to cease the persecution of its citizens for their membership of trade unions.

Members of independent free trade unions across the country faced pressure from their employers. Mr. Bury, the director of the Mazyr Oil Refinery’s Palace of Culture and his deputy Mr. Charniahou held a meeting with those of their employees who were members of the plant’s independent trade union and instructed them to withdraw their membership and to join the pro-government trade union of chemists instead. As a result, 6 members of the independent trade union were forced to leave.

According Mr. Lazarenkau, the foreman for the Belarusian Free Trade Union (SPB) at Brest State University, the university administration carried out an attack upon its members in 2009. In August, members of the independent trade union were called back off leave, threat-

ened with the termination of their contracts and the withholding of their Candidate of Sciences degrees and forced to withdraw from the union. According to Aleh Halenka, a music teacher, he was summoned by Mr. Chasnouski, the university rector and told: 'either you leave the union and we continue working together, or we don't.' Mrs. Sendzer, the vice-rector of the university also pressurized him. The teacher was forced to quit his job. Previously, the trade union had about a hundred members at the university, but now there are only eight.

On 3 September the Belarusian Congress of Democratic Trade Unions (BCDT) declared that members of independent trade unions were still being harassed. Members of trade unions belonging to the BCDT 'in some places are still being harassed and discrimination on grounds of membership has not been eliminated.' The statement cited the example of the dismissal of Aliaksei Habryel, the leader of a branch of the Free Trade Union of Belarus, who had worked at Lukoml Power Plant and was later forced to leave after the plant manager refused to extend his employment contract. A month before the dismissal the Director of the Plant told him that 'your contract is not going to be renewed, because you have been engaged in very disruptive trade union activities.' In October, Mr. Habryel took his former employer to the Chashniki District Court and demanded that his employment be resumed under Article 14 of the Labor Code.

In early December 2009, Alexander Bukhvostau, one of the leaders of the trade union movement in Belarus reported that there had been a rally in support of Yury Loban, a former employee of the Belarusian Automobile Plant in Zhodzina, who had been fired due to his membership of the independent trade union of the radio and electronics industry. As a result, a lawsuit was filed in the Zhodzina City Court.

The fixed-term contract system, whereby almost all the workers of state enterprises are employed on short-term contracts, allows managers to 'legally' rid themselves of unwanted civil activists. In March, Uladzimir Hubski, a boiler operator, Free Union member and civil activist from Polatsk, was informed of the termination of his contract. He was the only operator with a higher education and had worked in his positon for more than 17 years. Nevertheless, the director of Polatsk housing department said that his services were not required. The conflict was caused by the fact that in July 2008 Mr. Hubski had applied for permission to hold a rally demanding the return of historical names to the streets of Polatsk. Mr. Kapitan, the housing department's ideologist and

Mr. Makarevich the chief of the town's heating department insisted that Mr. Hubski withdraw his application, but he refused.

Discrimination on political grounds is particularly difficult to bear for those activists that live in small towns and villages, where the local authorities control all state-owned enterprises and can create intolerable conditions for their political opponents. Activists are harassed in the courts and by prosecutors' offices, recruitment offices and the militia refuse to allow them to search for work and thus they are marginalized. Meanwhile, local executive authorities exercise absolute control over the regions, while taking orders from above

For over a year, Leanid Autukhou, the head of the Haradok district BPF office could not find a job (he had been sacked in 2008 for participating in parliamentary elections). Being an Electrical mechanic by trade, he tried with the help of the local employment center to find work as an electrician, but every time he applied for a job, the vacancy suddenly disappeared. In February there were no vacancies at an armaments factory and in April there were none at the district hospital. Together with Mr Zhytkevich (a BPF member and former dentist's assistant, who had lost his job after acting as an observer in a parliamentary election and had been refused farm work four times despite agreeing to the lowest of possible salaries) on 30 June Mr Autukhou went on hunger strike in protest of the situation.

In the summer of 2009 the employment contract of Alexander Strachuk, a BPF member from Kobryn, was not renewed due to his refusal to join *Belaya Rus* a pro-government organization. According to A. Strachuk, 'when the head of my department distributed the application forms, she said that membership in *Belaya Rus* was a must, under threat of dismissal. I immediately said that I would not join it because it went against my political views.' Mr. Strachuk returned the forms and afterward he was informed that his contract would not be renewed.

The employment contract of Pavel Nazdra, an activist from Mazyr and an observer of the 2008 parliamentary elections, was not renewed by the Pedagogical University. After he found employment in a different company, the local military enlistment office initiated a civil case against him on the grounds that he had failed to inform them about his new job. Mr. Nazdra said, 'The military prosecutor who came to inspect the recruitment office told me «We only noticed you because of your civil activism».'

Ihar Barysau, a member of *Hramada*, the Belarusian Social Democratic Party, was fired by *Pipelines Configuration Service Ltd.* allegedly on the grounds that he had failed to acquit himself of his professional responsibilities. This was not Mr. Barysau's first dismissal. In 2006 he had been fired from the *Mahiliouliftmash* factory for taking part in a protest rally.

Aliaksei Aleksandrovich, an activist in the *For Freedom* movement and a member of the Belarusian Christian Democracy (BCD) party from Chashniky, has not been able to find a job for a long time. He publishes an independent newspaper and administers the town's independent website. In his words, 'all attempts to find work end so I cannot even enter the local factory. The town authorities fear that I'm going to work on 'disrupting people.'

It was the founders of the BCD party who faced the worst harassment for their political beliefs in 2009. Throughout the year, activists made several attempts to register their party and each time they were followed by a careful screening of all the applicants by the local authorities and unprecedented pressure being applied in their workplaces. On the eve of the founding congress of the party in February, Heorhi Stankevich, the coordinator of the Beshankovichy branch of the BCD was informed by the school in which he worked that if he attended the congress, he would be dismissed. Afterward, a number of BCD members from Svetlahorsk faced harassment at work. On 2 March Vadzim Bely, who worked as a loader, was asked to resign 'voluntarily' and Aliaksei Zhasan, who worked as an electrician, was threatened with dismissal. Both activists had never before had any problems with their employers. According to Pavel Seviarynets the co-chairman of the BCD, 'six to eight weeks after the first party congress, which took place on February 28, the party founders were summoned to the Ministry of Justice, to local executive committees and to ideological departments, where they were threatened with dismissals or expulsions from school.' Aliaksei Shein, the Co-Chairman of the organizing committee for the creation of the BCD said, 'BCD activists were intimidated and faced a hard choice. either they left the party or their jobs. One woman was even threatened with having her foster children taken away. The persecution was instigated by the KGB, by internal affairs bodies and by the ideological staff of executive committees.' In June, the employment contract of Siarhei Tryfanau, a BCD founding member and doctor in the Homel regional psychiatric hospital, was not renewed. 'From my conversations with Dr Matoranka, the head physician, I realized that he had been placed under pressure to have me dismissed', he said. According to the data provided by the BCD, more than 500 activists of the party had faced victimization in 2009. As a result party members filed complaints with local prosecutors' offices, as well as with the General prosecutor's office. All of them were turned down after the prosecutors 'failed to find' any violations by the executive authorities or by state employers.

Later in 2009 on 31 October, the BCD held another congress, which resulted in yet another wave of persecutions against its members. According to Mr. Rymasheuski, one of the co-chairmen of the party, Tamara Fiodarava, an employee of the Babruisk meat processing plant, was threatened with dismissal. Alena Chuzhak, who lives in council accommodation, was threatened with eviction if she did not resign as a member of the party. In Pinsk, Brest and Babruisk party members were questioned by the KGB who demanded they resign from the party. Following these incidents, the co-chairs of the BCD Mr. Seviarynets and Mr. Rymasheuski lodged a complaint with the Prosecutor General, which was forwarded to the Ministry of Justice. This was, in fact, the body the complaint was filed against. According to A. Shein, there were more than 30 cases, where people who had signed the party's founding documents were victimized. 'This is a massive campaign. Under various pretexts our members are summoned by their employers and instructed to resign from the party or face dismissal. If this tactic cannot not be applied at work, school, college or at university, the BCD members are summoned to local executive committees to be interrogated by ideological officials and special service representatives. They are forced to explain why they signed the founding documents and serious threats are made against them,' said Mr. Shein. As a result, five people withdrew their signatures from the constituent documents of the BCD. Halina Yarashevich, a BCD member from Baranavichy said: 'I used to work in a medical institution. They were happy with my work and my contract had already been extended for another year. However, as soon as it became known that I had signed the founding documents of the BCD a general meeting of institution's administration was called, during which I was 'branded a disgrace', just as in Stalin's times... I was fired before the termination of my contract and it was expressly stated that I had been 'seen in opposition circles.'

The founding of the Belarusian Party of Workers, resulted in a similar campaign against it. Its first assembly was held on 26 July. The

elected Chairperson of the party Alexander Bukhvostau said: 'The founding members of the party are under pressure. The Ministry of Justice is acting in its usual way and with the help of local councils and the departments of the Interior, it's checking up on everyone who came to our first congress. These checks are a form of psychological pressure and are combined with demands that we resign from the newly formed party.'

Members of the unregistered youth organization *Young Front* were also persecuted. After participating in a rally on 14 February Alena Palishchuk, who was still a minor, was phoned by a representative of the local Committee on Education and warned that she was to be investigated for taking part and that this fact would be reported to her school. Yaraslau Lyskavets also took part in the rally. His parents received a phone call from the local education department and were advised start raising their son properly; they were also told that his school was going to keep an eye on his behavior. Maryia Maroz was threatened with expulsion from school for 'insulting behavior'.

On 28 May Piotr Ruzau, a *Young Front* activist from Baranavichy, was expelled from the financial and legal department of the local university 'for breach of internal discipline'. 'Since the beginning of the year, the University has been repeatedly visited by the KGB and the militia, who threatened to have me expelled for my activism', said Piotr Ruzau. 'My prosecution for graffiti, apparently, was the last straw'. However, as a result of massive coverage of the incident by the media, the next day he was reinstated by the university. 'The rector didn't like the fact that my case was being covered by the media and that journalists kept on phoning the dean's office... He said that I had been going around slandering and humiliating the University.'

One of the most notorious cases was when Tatsiana Shaputska, head of the *Young Front* press-service, was expelled from the Law Faculty of Belarusian State University following her participation in the Civil Society Forum of the Eastern Partnership Program, which was held in Brussels from 16 to 17 November. Belarusian students should obtain the authorization of the Ministry of Education before taking part in international events, which she had failed to do. As a result she was expelled 'for violating internal regulations'. According to T. Shaputska, 'on the eve of my expulsion the deputy dean said that I had come to the attention of the relevant government department.' On 15 December Jose Manuel Pinto Teixeira, the European Commission's Ambassador to Ukraine and

Belarus, said that the incident had been raised at a meeting of EU foreign ministers as a part of the Eastern Partnership program: 'We believe this incident will be taken into account by the EU when considering the Belarus.' On 17 December the EU Parliament adopted a resolution calling on the Belarusian authorities 'to guarantee political rights and freedoms by ending the practice of politically motivated acts of harassment, especially dismissals from work and expulsions from educational institutions.'

— Language Discrimination

Throughout the year the state appeared to pursue a policy of restricting the use of Belarusian in various social and cultural spheres, as well as in education. According to Aleh Trusau, the Chairperson of the Belarusian Language Society (BLS), the Ministry of Education published the statistics on the numbers in Belarusian-language education five months after the beginning of the school year only after repeated appeals from activists. 'This is probably due to the fact that the statistics that they have provided us with are very alarming. The number of children studying in Belarusian has fallen far faster this year than in previous years. It used to be a drop of half a percent per year, but now it's nearly two percent. This reduction is huge and is especially great in cities.' (18.4% of the country's children attend Belarusian-language schools whereas in the previous year it was 20.9%). In the 2008-2009 school year, the first-year intake in Belarusian-language schools accounted for 16.7% of children, while in urban areas this percentage was only 1.9%. 'In the future, if this trend continues, it could mean the complete extinction of Belarusian-language education,' said Aleh Trusau.

In April, Aleh Trusau, speaking on behalf of the BLS addressed Uladzimir Makei, the head of the Presidential Administration, requesting that a Belarusian-language state television channel be set up and argued that its absence deprived Belarusian-speaking citizens of information in their own language. The appeal was forwarded to the Information Ministry, which replied on 24 April. Minister Rusakevich stated that there were five national TV channels, 'each one of them broadcasts something different and targets a different audience.' The creation of a new channel that would compete with of one of the pre-existing channels would 'inevitably lead to changes in the dispersal of information in the country and would entail considerable financial expense.'

In 2009 statistics concerning the circulation of books printed in Belarusian in 2008 were published. In comparison with 2007, the number of Belarusian books decreased by 7%. Books in Belarusian constituted 5.5% of the total number in 2008.

In January, in Pinsk all the signs with street names in Belarusian were replaced by Russian ones. Siarhei Housha a human rights activist from Baranavichy for a long time could not obtain property deeds printed in Belarusian. Only after several complaints to the authorities did the *Bresthiprazem* Institute finally issue him with the documents in Belarusian.

On 21 February a number of protesters were arrested during an International Mother Tongue Day rally in Homel. Five demonstrators marched along the city's main street to lay flowers at the monument of the Belarusian saint Kiryl of Turau. Apart from carnations they also held in their hands signs that read 'Mother Tongue' stamped with the word 'Forbidden' in Russian across them. The protestors tied up their mouth with red and green ribbons. The protesters and two journalists were arrested by plain clothed militiamen and taken to the militia station, where everyone, including the journalists, was charged with 'causing a disturbance during a street rally' under Part 1 of Article 23.34 of the Civil Code. Kanstantsin Zhukouski an activist was held for 7 days, while all the other protesters and journalists were given large fines.

Dzmitry Khvedaruk and Franak Viachorka, who had both been conscripted for political reasons, were faced with a language problem while serving in the army. Despite the fact that Belarusian is one of two official languages, the use of which is enshrined in Article 17 of the Belarusian Constitution, it is virtually unused in the army. However, under Article 20 of the Act *On Languages in the Republic of Belarus*, 'Belarusian and (or) Russian shall be the languages used in the Armed Forces and other military units of the Republic of Belarus.' The youth activists consistently defended their right to use their native language. This resulted in discrimination on linguistic grounds.

In May Dzmitry Fedaruk had a medical examination to determine his fitness for military service. 'The first doctor to assess if I was fit enough to serve in the military was a psychiatrist and a colonel. We started to talk. I spoke in Belarusian and he spoke in Russian. Suddenly his mood changed. He almost started shouting at me, saying that that I wasn't showing him any respect, as he was a colonel and I was just a private. He said that as he was talking to me in Russian I had to be making fun

of him since I was answering in Belarusian... He threatened to write in his assessment that I was a moron, as I was not able to learn Russian.' In June Dzmitry Fedaruk said that he had been disciplined because when on duty he had spoken in Belarusian. The officers said that this was against military regulations and threatened to report him to the prosecutor.

The situation faced by Franak Viachorka, the former head of the *BPF Youth*, was even more alarming. According to his father Vintsuk Viachorka, in July ' Lt. Dzianis Kazak, the military psychologist of the unit, who was also an investigator, required Franak to repeat commands and respond to them in Russian... Moreover, he and warrant officer Piskun, as well as other warrant officers, began to use various offensive terms. 'Speak properly!', 'Speak normal language!' The commanders of the military unit used orders to make Franak change his language. He was ordered to answer in Russian and use Russian terms and then Lieutenant Kazak and Uladzimir Ihnatsik, the deputy commander for ideology, threatened Franak with criminal prosecution for alleged insubordination and failure to follow orders.' As a result of the conflict Franak Viachorka was summarily punished and was denied leave. He lodged a complaint with the prosecutor's office against the officers, who had forbidden him to speak in Belarusian; however, inspections by both the national and the inter-garrison military prosecutor's offices failed 'to establish the facts'; however, the activists were no longer forbidden to speak Belarusian.

When this linguistic discrimination in the Belarusian army came to light, the Human Rights Center *Viasna* publicly appealed to the Prosecutor General and the Minister of Defense, urging them 'to stop the illegal harassment and pressure placed on Private F. Viachorka and other Belarusian-speaking servicemen resulting from their usage of Belarusian while serving in the army.' *Viasna* pointed out to the Minister of Defense that in the 18 years of Belarusian independence there had been no Belarusian translations of military regulations or other documents in the Belarusian army and the Ministry of Defense had simply ignored the existence of the other state language.

The Zhodzina town authorities by decision number 928 of 23.06.2009 closed a class taught in Belarusian in Secondary School number 1, citing a lack of funds. As a result, one of the students Yanka Lapitski was deprived of his right to continue his education in Belarusian. In 2009 Lapitski's education in the school lasted for just over a

week, until Henadz Karshun, the headmaster, citing an anonymous telephone call from Minsk, barred Yanka Lapitski from entering the school grounds. The Zhodzina district education department offered his parents the following options for Yanka to continue his education in Belarusian: He could either transfer to a village school, where Belarusian was spoken or he could study alone at home before taking his exams. The parents insisted on their son resuming his education in Belarusian at school.

In September, the youth organization *Young Front* launched a campaign *For the Belarusian Language*, which aimed to raise public awareness of the discrimination against Belarusian. They collected 50 thousand signatures for a proposal to support Belarusian education in schools and for the creation of at least one Belarusian university, which they intended to send to the authorities. In certain parts of the country, the campaign was opposed by the militia and by other government bodies. In October two youth activists Yaraslau Hryshchenia and Ales Paulouski were arrested while collecting signatures in Baranavichy. ‘Law enforcement officers detained us for not having permission to collect signatures. However, at the militia station we were charged with using foul language (‘disorderly conduct’)’, said Mr. Hryshchenia. The Centralny District Court in Baranavichy fined Hryshchenia and Paulouski BYR 350,000 each. the three hundred signatures that they had collected were not returned to them. The militia also arrested activists collecting signatures in Minsk and Karelichy. On 22 October two *Young Front* activists Maksim Ahrymenka and Yury Bahdanovich were beaten up by unknown assailants while collecting signatures in Baranavichy. The incident was witnessed by a militia patrol that failed to intervene or arrest the offenders.

In early September, the Minsk city executive committee banned a rally with the slogan ‘Belarusian schools for Belarusian children!’ organized by Ihar Chapiha, a youth activist. Although the rally was supposed to be held at a specially allocated site, in Bangalore Square, Mikhail Titsiankou, the Deputy Chairperson of the Minsk city executive committee stated that the rally would interfere with traffic on adjacent streets.

— Ethnic discrimination

In 2009, one of the unresolved issues facing the Belarusian authorities was that of their relations with activists from the Polish minority who had refused to participate in the pro-government Union of Poles in Belarus (UPB), which had been set up by the authorities in 2005, but instead remained members of an unregistered breakaway organization. Apart from the problem of the legality of their organization, these activists from the Polish minority raised the following issues: the reduction in the opportunities to learn Polish as a subject in school since, under pressure from local authorities, Polish had become an optional subject and this significantly reduced the number of those willing to study it. And they also raised the issue of the restricted right to disseminate information in Polish, since almost all the Polish-language publications in Belarus had no state registration due to the difficulties in the registration procedures. In the autumn of 2009 teachers of Polish in the Hrodna region were subjected to tax inspections. Andzelika Orechwa, the Deputy Chair of the unrecognized Union of Poles in Belarus, said that Polish teachers had been summoned to their local tax inspectorate and asked if they had received any money from Poland, if they had worked with the Hrodna-based firm *Polonika*, which was run by Andzelika Borys the head of the unrecognized UPB, or if they had participated in teaching seminars that had not been organized by the Belarusian authorities.

The authorities placed a lot of pressure on the supporters of and the activists from the unrecognized Union of Poles in the run up to the organization’s Congress that was scheduled to take place between 14-15 March. Activists from the unrecognized UPB were summoned to appear before the KGB, the militia, or the local prosecutor and threatened with criminal proceedings if they chose to take part in the Congress. According to Stanislaw Mulica, a member of the unrecognized UPB, a KGB officer came to visit him in hospital and ask him whether he would be taking part in the forthcoming Congress. The KGB also attempted to recruit his son Witold, but when he refused, they began to intimidate him. According to a number of members of the unrecognized UPB from Shchuchyn, Ivan Sakalouski, the Deputy Chairman of the local executive committee warned them that they would be arrested if they tried to go to Hrodna on the day of the convention. The Polish authorities, being deeply concerned by the situation, appealed to the Belarusian government. In an interview with the magazine *Wprost*, Jan Borkowski the Polish Deputy Minister of Foreign Affairs said that the reaction of officials in Minsk to the Congress ‘will influence our position on Belarus at the EU Forum.’ Robert Tyszkiewicz, a member of the Polish Sejm from Bialystok and the Deputy Chairman of the Foreign

Affairs Committee, said that 'a peaceful UPB Congress and an end to the harassment of its activists should be one of the conditions for further dialogue with Minsk.' On 13 March, the eve of the Congress, the leaders of the unrecognized UPB together with Andrzej Poczobut met the Polish President Lech Kaczynski.

The Congress of the unrecognized UPB was held and its 165 delegates re-elected Andzelika Borys as their leader. The Congress appealed to Lukashenko for him to establish a dialogue between the unrecognized UPB and state bodies, which could facilitate the registration of the organization. The Administration of the President rejected the appeal and Ihar Buka, the head of the General Department for Work with Citizens' Appeals and Public Associations, issued a statement saying that the official Union of Poles was headed by Jozef Lucznik and no others had the right to speak on behalf of the organization. Mr. Buka said that an appeal of an unregistered organization signed by a person who had usurped the status of its leader would not even be considered.

After the Congress, *Channel One* of Belarusian state television broadcast a program which resulted in complaints from the unrecognized UPB to the Prosecutor General of Belarus. The appeal to Mr. Vasilevich, the Prosecutor General, stated: 'The program aired information that is not only insulting to the honor and dignity of our members, but is also aimed at inciting national hatred. In particular, the authors argued that at our organization's Congress it was announced that 'the Poles are a superior race.' No such claims were made at the Congress, so the information broadcast on state television was wrong. The reason for broadcasting false information was to convince members of other ethnic groups in Belarus that the Poles considered themselves to be superior and thus provoke hostility towards the Polish minority.' In June one of the signatories of the complaint, A. Poczobut, was summoned to the Hrodna regional prosecutor's office and formally warned that violating the law would not be tolerated. In particular, he was told that he had no right to present himself as the Chairperson of the UPB Central Board, nor had he the right to use the symbols of the UPB. 'The General prosecutor's office did not want to consider our complaint. It is not interested in Belarusian state TV inciting racial hatred; it is only interested in our Union of Poles and the fact that we are illegal,' A. Poczobut said.

In August, the Hrodna Leninski militia station launched an investigation based on an anonymous letter that, according to A. Borys, claimed that she was 'a nationalist, who was collaborating with nationalist Belarusian parties, providing them with premises and had allowed certain financial irregularities.' Mrs. Borys was forced to explain everything to the militia.

In October extreme pressure was put on Teresa Sobal, the chair of the unrecognized UPB Ivianets branch. She was visited by representatives of the local authorities and offered a position in the pro-government Union of Poles and told she could participate in its September congress. When she refused, they threatened to interfere in the activities of the Polish House in Ivianets, an organization which she headed and as a result, the committee of state control seized documents from the organization for inspection and its members were summoned to be interrogated by the Committee. Mrs. Sobal was repeatedly summoned to the department of financial investigation and accused of financial violations related to the activities of the Polish House in Ivianets.

On 17 December, 2009 the EU Parliament adopted a resolution calling upon the Belarusian authorities 'to respect the rights of national minorities... to recognize the Union of Poles in Belarus, headed by Andzelika Borys, who was re-elected chair of the Union of Poles by the UPB Congress on 15 March 2009.'

In early August 2009 Leonid Stonov the International Director of the Bureau for Human Rights and Law-Observance in the Former Soviet Union and the President of the American Association of Jews from the former USSR, was in Belarus attempting to register the Association's representative office. He commented on the problem of racism and xenophobia against the Jewish minority and noted that 'Belarus still lacks a state concept of how to foster and develop relations between different ethnic groups and of how to respect national and religious minorities. Therefore they are putting at risk the assimilation of these groups into society. For example, in Belarus there are no state-funded Jewish secondary schools, no newspapers or cultural institutions (theaters, clubs, or museums); there are no radio and television programs.' Mr. Stonov said that 'human rights activists have reported a number of cases of nationalistic crimes, especially of vandalism (Nazi graffiti on Jewish monuments and memorials, the destruction of cemeteries, building «on the bones», rampant anti-Semitism and other forms of xenophobia on the Internet, the importation of neo-Nazi literature from Russia, 'tours' of Russian skinheads, especially in Vitsebsk and Mahiliou. The authorities have so far failed to respond adequately to these incidents.' Mr. Stonov also stated that 'in some cities (Minsk, Barysau, Brest,

Mahiliou) there is a strong case for the return of public buildings that were owned by Jews before October 1917 to Jewish religious and secular organizations.' He also noted that some Belarusian officials of 'the Soviet-style', while continuing to remain in important posts, 'distinguish themselves with their hatred for the Jews' and prefer to ignore the manifestations of antisemitism.

The comments above are supported by the facts. In Vitsebsk anti-Semitic slogans and swastikas appeared on the wall of a local synagogue on 22 April. According to Haim Maharshak the Head of the Vitsebsk Jewish society *House of Israel*, this was not the first time and despite the fact that the previous time the militia had stated that it would be impossible to trace the culprits, H. Maharshak reported the incident. On 9 May In Brest city center, the local ghetto memorial was desecrated. Barys Bruk, the Chairperson of the Brest Jewish community said that 'the vandals burned all the wreaths and flowers at the monument. The monument itself is black with soot and has gum on it.' In Mazyr the local authorities destroyed a monument in the form of a boulder with a commemorative sign in memory of the Jews who set fire to themselves in the autumn of 1941. In 2008 the Belarusian Ministry of Culture's National Scientific Advisory Board for Historical and Cultural Heritage included the site of the self-immolation of the Jews on the historical and cultural heritage list and urged the authorities to restore the memorial sign and look after surrounding area; however, these recommendations were not implemented by the Mazyr town council. Furthermore, in August 2009 during the repairs to a heating system the graves of victims of the Holocaust were damaged. According to Yakau Hutman, the President of the World Association of Belarusian Jews, 'I saw coffins broken by the bucket of an excavator and human remains disturbed. The evidence shows that the Nazis used to kill people and the last vestiges of their memory are being destroyed in today's Belarus.' In April Mr. Hutman addressed the Belarusian authorities with an appeal to preserve the Jewish synagogue in Luban. The building was once associated with a number of famous figures from the history of Belarusian Jews and in particular with Moshe Feinstein, a famous rabbi of the 20th century, a fact that was commemorated by a memorial plaque on the wall. However, the synagogue was knocked down by the decision of local authorities in April 2009.

In July, Yakau Basin, a Jewish historian and civil activist drew the public's attention to the fascist symbols and anti-Semitic slogans on the

walls of buildings: 'In the streets of Minsk and several other Belarusian cities, including Homel, one can find swastikas and threatening neo-Nazi graffiti.'

On 9 November the Israeli ambassador to Belarus Edward Shapiro, speaking at an international conference on Christian-Jewish dialogue, noted that the Belarusian state had restored churches that had once belonged to the Christian community, but had not restored many of the synagogues and other public buildings that had once belonged to the Jewish community. The same applied to aid for the restoration of these buildings. Among other problems mentioned by Mr. Shapiro was the reluctance of prosecutors and the militia to initiate criminal proceedings for inciting racial hatred 'even when it is apparent to the naked eye.' The Ambassador gave the example of when a swastika with an anti-Semitic slogan appeared on the wall of the Jewish Community Center in Slutsk. 'In my opinion, that is a clear example of racism', said the Ambassador. Moreover in July 2009, a swastika and other anti-Semitic graffiti appeared on a monument to the memory of those who had died in the Slutsk ghetto.

— *Religious discrimination*

The state continued to discriminate those who belonged to various religions and especially against members of Protestant denominations. The Minsk City Executive Committee had been fighting the New Life Church from the time two years ago when the Committee seized the Church's land and place of worship. The trial at the Supreme Economic Court lasted for over a year and in early 2009 the court ruled in favor of the Minsk City Executive Committee, stating that the confiscation of the land and then the compulsory purchase of the 1,700-square-meter church building for 37.5 million rubles had been legal. The Church decided to fight for their building and turned down the offers of the city authorities to allow them to build another in a different location due to the high price of the new construction and low level of compensation for their existing building. Then, Leanid Huliaka, the Commissioner for Religious and Ethnic Affairs in Belarus, speaking at a press conference, backed the Minsk City Executive Committee and said that 'the building had not been provided by the Minsk city executive committee as a building for public worship. The building had been turned into a chapel, a religious building, without permission by the Church leaders.'

5

On 7 August Mikalai Hancharenka, the pastor of the *New Life* Church was summoned to the Maskouski District prosecutor's office in Minsk and issued with an official warning that he was in breach of the law. This was because representatives from the Emergency Situations Ministry had not been let into the church building on 16 July. Mr. Hancharenka replied that the decision not to admit any officials into the building had not been taken by him personally, but had been taken by the whole church community in response to the attempts by the Minsk city authorities to seize the building. On 13 August three bailiffs tried to enter the Church, but they were again refused entry. The Minsk authorities presented the Church with another ultimatum on the 20 August; they were told to vacate the building by 7 p.m. In response, the Church organized a musical marathon on this day. Musical groups from other Protestant communities performed for 26 hours in solidarity with the *New Life* church. At the end of the month the Church once again refused to allow representatives of the Emergency Situations Ministry to enter the building and on 9 September the Maskouski District prosecutor's office in Minsk brought civil charges against Mr. Hancharenka. On 1 October Alena Shylko, the Judge from the Maskouski District Court in Minsk, upon consideration of the charges, fined him BYR 420,000.

The Supreme Economic Court again ruled against the Protestant community in December. Pastor Hancharenka said, 'The court decision is an example of our country having a serious problem with the freedom of religion. The authorities obstruct normal religious activities and especially of our Church. From time to time, we have problems with our pastors being unable to register a church or build a chapel. This is a problem that mostly affects the Protestants.'

In August the Navapolatsk authorities refused to allocate land to the local Protestant community. Pastor Antoni Bokun said, 'This is the third time in the last 15 years that the local authorities have seized land allocated to the community. All the bishops of the United Church of Evangelical Christians in the Republic of Belarus have sent a letter to the President requesting that he help resolve the situation. They have pointed out that the actions of the authorities of Navapolatsk are unlawful, unreasonable and violate the legally protected rights of believers.'

A Protestant celebration of Harvest Festival that took place in a private house in Asipovichy was stopped by representatives of the local executive committee and the militia. The organizer of the festival took responsibility and was fined. Mrs. Ludmila Batsiuk was fined 140 thousand rubles by the Mahiliou Kastrychnitski District Court for setting up a religious organization. Mrs. Iryna Marshalkouskaya-Hryk was fined for organizing a Protestant prayer meeting in the village of Harbachevichy in the Chavusy District. Her religious texts were confiscated. Piotr Malanachkin, a Protestant from the town of Horki was not allowed to register his Church on the grounds that he did not own the building and at the same time no land was allocated. Mr. Malanachkin was fined for placing a stand with religious literature in the window of his house. The stand was destroyed.

Armen Kahramanian, a member of the New Generation Minsk Protestant church, who had lived with his family in Minsk and possessed a residence permit for more than 15 years, was threatened with deportation by the Frunzenski militia station, who sought to intervene in the religious life of the family and inquired about his membership of the Protestant church. 'There are Orthodox, Catholics and Muslims. These are religions. The others are sects', said D. Linkus the Deputy Head in charge of Public Order of the Frunzenski militia station.

Thus, in 2009, the authorities used discriminatory measures against political opponents, Belarusian-speaking citizens, representatives of national and religious minorities in Belarus. These measures were applied systematically to certain groups of citizens in order to maintain absolute control over society.

5

6. The Right of Freedom of Association

In 2009 the situation in regards to the freedom of association in Belarus did not undergo any significant changes. The main problems faced by public associations in regards to their registration and other activities remained unchanged. The authorities still refused to register public associations and political parties on dubious grounds including the sociopolitical stance of their founders. The ban on the activities of unregistered public associations, foundations, political parties and religious organizations remained and resulted in criminal prosecutions (Article 193-1 of the Criminal Code, 'Illegal organization of a public association, religious organization or foundation or participation in their activities'. Many registered NGOs and parties were forced to find a legal address in non-residential premises (conditions for non-governmental associations and parties in this respect are worse than for many businesses, which may be registered in their owner's private apartment) and it remained impossible to rent premises for meetings without permission. The procedures for accepting foreign grants and domestic sponsorship for non-governmental organizations remained complicated.

The registration of several independent NGOs (especially the movement For Freedom) and of the local offices of some parties in late 2008 and early 2009 raised hopes for a liberalization of registration procedures, but these hopes were not realized.

In 2009 Three parties were refused registration: the Party of the Belarusian Christian Democracy (twice), the Belarusian Party of Workers (the successor to the Belarusian Party of Labor, closed down in 2004) and the Party of Freedom and Progress (fourth failed registration attempt since 2004). In fact, not a single political party has been registered in Belarus since 2000. The authorities also denied registration to some local offices of parties that were already registered. (e.g. the BPF).

The registration procedures for independent associations did not change either. It was primarily youth associations and human rights organizations that were refused registration. In 2009, the human rights organization Nasha Viasna was twice refused, whereas the human rights organization Berastseiskaya Viasna was refused four times. Other organizations that were refused included the Assembly of Pro-democratic

6

NGOs, the youth associations, The Young Social Democrats, Modes (from Mahiliou), The Young Christian Social Union and Novy Kurs (from Minsk),and the cultural and educational associations Heritage (from Hrodna), Zalaty Leu (from Slonim), as well as others. In most cases the registration denials were legally ungrounded and clearly motivated by the political desire of the authorities to prevent these NGOs from legally existing. The Courts failed to uphold any of the complaints against the decisions of the Ministry of Justice or its departments to deny registration.

The current legislation allows for arbitrary registration denials. In 2009, the authorities announced their intention to simplify the registration of parties and public associations by amending the laws *On political parties* and *On public associations*. The state-owned media announced that the registration of new associations would be simplified, in particular they claimed that associations would not have to present so many documents for registration. However, analysis of the proposed changes raised serious doubts as to whether the proposed law was really aimed at facilitating the registration of new associations and simplifying the procedures. In actual fact, the changes were designed to give a legal basis to the excuses for which associations were already being turned down. They considerably expanded the list of legal grounds upon which registration could be withheld. Registration might now be refused due to the organization's charter being considered non-compliant with the law not only in terms of its goals, objectives, methods and activities, but for any of its provisions.

The idea of 'correcting deficiencies' in the documentation submitted for registration would also be rendered meaningless by the new legislation. Overall, the proposed changes were designed to bring legislation into line with the existing practice of issuing arbitrary registration denials for trivial reasons, since the authorities regard the legalization of many of these associations as undesirable. Other minor changes to the law were extremely technical in nature and were clearly not designed to simplify the registration procedure. For example, initiative groups would now be required to submit a digital version of their association's charter as well as a paper one. This provision of the bill is likely to cause the actual re-registration of existing associations, as they have never submitted digital versions of their charters. Some of the registration denials in the spring of 2009 were in fact issued on the basis of the pending bill, which not only includes an expansion of the legal grounds for refusal, but also the procedure of 'the suspension of the decision to

6

refuse state registration'. This clause was used when processing the application of the Belarusian Christian Democracy, even though it is not a provision of the current version of the law.

With the exception of associations, other non-governmental organizations can register commercially as institutions. This legal formula was introduced in early 2008 and amended by Presidential Decree number 1 of 16 January 2009. In 2009, becoming a legal institution was an extremely popular form of registration among those non-profit organizations that could not register themselves in the normal manner as associations or foundations. It was as institutions that the youth organization *Right Wing Alliance* (which cannot legally be called an association because of its organizational structure) and the youth center *Modes* continued to function legally despite having been refused registration. However, in the autumn of 2009 opponents of the authorities were also refused registration in this form (even though there is no basis for doing this in the law and it is a flagrant violation of the official registration procedures). In late 2009 it became known that the President was drafting a bill *On non-profit organizations.* This law would complicate the registration and operation of those non-governmental organizations that are not covered by the existing legislation and can therefore register under the so-called «notification system».

6

In comparison with previous years, the total number of registered organizations has not changed. According to the Ministry of Justice, in 2009 there were 94 new public associations (3 of them were international, 16 were national and 75 were local) and 8 new foundations (including one which was international). Statistics show that the judiciary annually registers approximately the same number of new public associations as the number of those that close down, either for voluntary reasons or due to closure by the courts.

The failure to register the Human Rights Center *Nasha Viasna* most clearly demonstrates the mechanisms used to suppress the freedom of association in Belarus and to oppress non-governmental organizations. On 26 January, 2009 an application for the registration of the association was submitted to the Ministry of Justice. the NGO's founders included human rights activists, journalists and public figures from across the country who had once been members of the Human Rights Center *Viasna* (closed down by order of the Supreme Court in October 2003). In 2007, these people had tried to legalize themselves, but the Ministry of

	October 30, 2003	January 1, 2004	January 1, 2005	January 1, 2006	March 1, 2007	January 1, 2008	January 1, 2009	January 1, 2010
Number of newly registered public associations (per year)	94	155	61	85	100	94	—	94
Total number of registered associations (as of date indicated)	2248	2214	2259	2247	2248	2255	2221	2225

Justice and later the Supreme Court refused to register their association. This was in spite of a ruling by the UN Human Rights Committee, which stated that the dissolution *Viasna* was a violation of the right to freedom of association and demands had been made of the Belarusian authorities to correct the situation.

6

On 11 March (which was in violation of the statutory one-month period for the consideration of an application for registration) the official website of the Ministry of Justice announced 'the refusal to grant state registration to the public human rights association *Nasha Viasna*.' On 19 March a complaint against the Ministry of Justice decision to refuse state registration was lodged with the Supreme Court, but the judge failed to take into account the arguments of the association and upheld the Ministry's decision. On 12 March the Helsinki Committees of Sweden, Norway, Netherlands, Moscow and Belarus called upon the Belarusian authorities to review their decision to refuse the registration of *Nasha Viasna*. In their opinion, the reasons presented by the Ministry of Justice for refusing the organization registration were unfounded. Their appeal also noted that 'the establishment of a free environment for the legitimate activities of human rights groups would demonstrate that Belarus was ready to liberalize society and to take steps to improve respect for human rights.'

There was another unsuccessful attempt to obtain registration made by *Nasha Viasna* in 2009. On 28 May the association received a decision from the Ministry of Justice refusing them registration. The reasons given for the refusal were the ongoing civil and criminal prosecutions of the founders (a reason with no legal basis) and technical inaccuracies in the submitted application (some of the founders had failed to state their home telephone numbers). On 12 August the Supreme Court dismissed the complaint lodged by *Nasha Viasna* against the Ministry of Justice for its refusal to grant them state registration. On the third attempt in two years to legalize the association officials from the Ministry of Justice gave arguments for their refusal to grant state registration that were unfounded and patently false. As a result the association gave up trying to register themselves and instead appealed to the UN Human Rights Committee complaining about the systemic violation of their right to freedom of association.

Technical fault-finding was also the formal grounds for the repeated failure of the Public Human Rights Association *Berastseiskaya Viasna* to register itself. In 2009 it was refused registration three times as a separate local association. The founders corrected the mistakes cited in the registration denials, but still their attempts to register were opposed by the authorities who would find ever more grounds upon which to base another refusal.

6

In the spring of 2009 the Ministry of Justice refused to register *the Assembly of Pro-democratic NGOs*. The Assembly believed the refusal to have been politically motivated (this was the second time it had been refused). The Ministry of Justice based its decision on violations of the NGO foundation procedures that had allegedly been committed by the Assembly. In particular, it was argued that the foundation agreement was invalid because the leaders of each of the member organizations had signed it without the consent of the governing bodies of their own associations. In fact, this is untrue as the agreement on the establishment of the Assembly was signed by the heads of the member organizations only after they had been authorized to do so in a meeting of their own organizations. Moreover, the Ministry claimed that the name did not meet legislative requirements, because it did not state what the activities of its members were. The Assembly of NGOs is comprised of 7 associations, including the *Belarusian Helsinki Committee,* the *Supolnasts Center*, the BPF *Adradzhenne*, the Human Rights Center and three other public organizations from Verkhniadzvinsk, Vitsebsk and

Mahiliou. On 4 June the Supreme Court of Belarus dismissed a complaint by the Assembly of NGOs against the Ministry of Justice. In December 2009 the Assembly held another founding congress and applied again for registration in early January 2010.

For many organizations that were refused registration, the main obstacle to their legalization was members who were considered to be political opponents by the authorities. Hence organizations of different kinds faced this problem. For example, in November the Department of Justice of the Hrodna regional executive committee refused to register the Slonim-based cultural and educational public association *Zalaty Leu* (*Golden Lion*), the founders of which had previously been members of another NGO, the Slonim youth association *Vetraz* (*Sail*) which had been closed down a few years earlier by a court decision.. Ales Masiuk, one of the founding members of the association confidently stated, ‘The authorities are pursuing a policy of not registering those people they have labeled as being opposition members. We could have corrected all the problems in the Charter within a day and they would have still banned us.’ On 29 December the Hrodna Regional Court considered the complaint lodged by the Slonim activists against the regional justice department but upheld the decision.

6

According to the Biarozauka-based public cultural and educational association *Spadchyna* (*Heritage*), it was the reluctance of the authorities to see another legitimate democratic organization operating within the law that formed the basis for their refusal to register the association. The decision was taken the Hrodna regional executive committee Department of Justice on 25 June. Officially the reason given was the alleged non-compliance of the organization’s registration application with current legislation. *Spadchyna* appealed against the decision in court, but the Hrodna Regional Court and later the Supreme Court dismissed their claim.

Throughout the year it remained impossible for independent youth organizations to register. On 2 July the Supreme Court of Belarus upheld the decision of the Ministry of Justice to refuse to register the Young Christian Social Union *Young Democrats*. In this case there were no firm grounds for denying registration and the mistakes identified in the application form (errors in the addresses of some of the organization’s founding members) could have been easily corrected. On 19 March a ruling by the justice department of the Mahiliou regional executive committee refused to register *Modes*, a youth initiative center The refusal

was based on certain legal discrepancies in the association's Charter. A number of courts at different levels later ruled to uphold the decision. (*Modes* was eventually registered in the form of an institution.)

In 2009, There were two refusals to register public national associations based on the alleged forgery of signatures. In the case of the Center for Chernobyl Initiatives Support, the Ministry of Justice admitted after numerous graphological analyses that the signatures of the founders had not been forged and registered the association without awaiting the Supreme Court's decision. (Though in this case there apparently was some kind of agreement between the officials and the founders of the association, who had been summoned to the Ministry and questioned about what they were intending to do). In the other case, *Horizontal*, a Social and Patriotic Association, was refused registration by the Supreme Court on 11 March despite the state's inability to prove that the signatures of the organization's founders had been forged.

On 15 April the Belarusian Christian Democracy received a notification from the Ministry of Justice that the party had been denied registration. The reason was for alleged discrepancies between what was stated on the application and the answers the founding members had given when questioned by the Ministry. The party held its inaugural congress in late February and after the registration documents had been filed almost every founding member was phoned by a representative of the local ideological department, the KGB or the militia. Some were summoned to answer to their employers and under the threat of dismissal ordered to withdraw their membership. The BCD application was processed by Aleh Slizheuski, the Deputy Minister of Justice, the official who was eventually to sign the refusal received by the Christian Democrats. However, the next day, 16 April, one of the Aliaksei Shein leaders of the BCD was phoned by a representative of the Ministry of Justice and told that the decision not to register the party had been suspended. The official reason was the number of appeals by members of the BCD, which needed to be considered before the final decision was made on whether to grant state registration of the party. When all the appeals had been considered the final decision was made, but it was still negative; the Ministry decided not to register the BCD. On 22 July the Supreme Court dismissed the appeal of the party against the decision of the Ministry of Justice to refuse registration (Valery Samaliuk was the presiding judge). Aliaksei Shein The BCD co-chairman stated that they had been refused state registration for politically motivated reasons. In 2009 the BCD filed another application for registration, which was dismissed again. On 9 December the Ministry of Justice again refused to register the Belarusian Christian Democracy. The reason was the alleged inaccuracies in the information about the regional meetings of the founding members. According to Vital Rymasheuski, co-chairman of the party, there had once again been dozens of cases where the founding members of the BCD had been summoned and threatened by the ideological departments of local executive committees, by the administrations of educational institutions, or their employers. As a result of these tactics five people were forced to withdraw their signatures.

On 15 June the Ministry of Justice for the fourth time refused to register the Party of Freedom and Progress on the grounds that 'the Congress records contained conflicting information' (the Ministry of Justice was referring to apparent irregularities in the nomination of delegates) and because they also claimed that 'the list of founding members contained invalid information'. This refusal was also confirmed by the Supreme Court.

On 15 December the Supreme Court dismissed the appeal of the Belarusian Party of Workers against the state's refusal to register the party. Aleksandr Bukhvostau, the Chairperson of the party's organizing committee pointed out that many founding members had been intimidated into withdrawing their signatures from the application for registration. He also said that they were going to continue working as an organizing committee for the establishment of the party and would soon arrange a new Congress.

In late March the Hrodna Regional Executive Committee refused to register the Hrodna offices of the BPF Party as well as the BPF Association *Adradzhenne*. This refusal was confirmed on appeal to the Supreme Court, despite the fact that it was justified solely on the basis of legally-groundless arguments about the non-compliance with documentation requirements of the font types used in the submitted application.

In 2009, the government continued to apply Article 193-1 of the Criminal Code as a means of intimidating civil activists in order to force them to stop participating in unregistered NGOs. In August, Mikhail Iliin, an activist from the Brest office of the *Young Front* youth movement, was threatened with criminal prosecution by the local prosecutor's office if he did not withdraw his membership from the unregistered organization. Another prosecutor's warning was issued to Yulia Pashko, the leader of the Brest office of the *Young Front* in December 2009.

On 19 February the prosecutor's office issued a warning of possible criminal prosecution under Article 193-1 of the Criminal Code to Teresa Selivonchyk the chair of the Baranavichy office of the unrecognized Union of Poles in Belarus, just before the Congress of that branch of the association was to take place. This was the first time that the authorities decided to use this law against the members of the Polish minority association. At the same time, pressure was openly applied across the country to Union activists forcing them to give up their membership of the association. People were summoned for questioning to the KGB, to the Interior Ministry or to the prosecutor's office, where they were explicitly threatened with criminal prosecution.

In May 2009 for the first time since April 2008 someone was convicted under Article 193-1 of the Criminal Code but the punishment was not imposed due to an amnesty. The case against Andrei Nestsiarovich (Homel) was instituted back in 2007, when activists of the pro-Russia neo-Fascist organization RNE were prosecuted under Article 193-1. Since that time Alexander Nestsiarovich had been living in Russia, but he returned to Belarus aware that an amnesty had been declared.

In June, the prosecutor's office in Minsk brought a criminal case under Article 193-1 of the Criminal Code against Yauhen Volkau a 25-year-old resident of the capital and representative of the unregistered *Unification Movement* (The Moonies). The investigation was soon terminated, but in December 2009 it was re-opened. This was the first criminal case against a representative of an unregistered religious organization since 2006, when the provisions of Article 193-1 first took legal effect.

In total, between 2006-2009 it was reported that 17 people were convicted under Article 193-1 of acting on behalf of unregistered associations. In 2006 there were 6 convictions in 2007 there were 9, in 2008 there was 1 and in 2009, also 1. No acquittals were reported by human rights activists.

In early September, in a reply to a request for information from the Czech NGO *Civil Belarus* the Ministry of Justice stated that the authorities were considering the possibility of replacing criminal charges for acting on behalf of an unregistered association with civil ones. This was the first sign that the authorities might consider revising Article 193-1 and reduce the penalties incurred, but no practical steps were taken until the end of the year. It turned out that the authorities were considering neither lifting the ban on acting on behalf of an unregistered organization, nor repealing Article 193-1 of the Criminal Code, but only reducing the penalties for such actions. The Ministry of Justice restated its intention to reduce the penalties for the acting on behalf of an unregistered association during the annual Human Dimension Implementation Meeting of the OSCE. The Presidential Administration also stated the same. However, no real steps towards the revision of Article 193-1 of the Criminal Code were taken and no bill was submitted to Parliament.

During the year, the Ministry of Justice continued to issue written warnings to public associations. On 6 January a warning was issued to the *Belarusian PEN-Center*. The warning was based on the results of an inspection of the association's activities, which was carried out in spite of the six-month moratorium on such practices declared by the authorities in late 2008. The organization was accused of lacking a legal address despite an existing rental contract, of breaches in the documentation requirements, of unauthorized correspondence via e-mail and of improper protection of its members. (This last accusation related to protest statements that the organization had made regarding the seizure by customs officers on the Belarusian Polish border of the magazine *Arche*, which was allegedly an extremist publication.)

In February, the Homel Regional Department of Justice issued a warning to *Talaka*, a public local history organization for young people that had been active in the region for over ten years. Vital Makarevich, the Department's Head, stated that the written warning was issued for using unregistered symbols on the organization's website and in leaflets that were distributed by *Talaka* in the regional center.

A major obstacle to the creation of new associations and the registering of NGOs and party offices was the need to have an office and a registered legal address in non-residential buildings. Local authorities still put pressure on landlords who dare enter into such contracts. Moreover, the legal difficulties faced by NGOs and political parties are even worse than those faced by commercial organizations, which may be registered at the private apartments of their founders. Meanwhile, a large number of premises suitable for NGOs are state-owned and have unreasonably high rents. During 2009 many organizations reported difficulties in paying for administrative offices and in some cases this was used as formal grounds for terminating their activities.

In early February, the Public Association *For a European Masty District* (the town of Masty, Hrodna region) failed to find a legal address in

an administrative building and this became an insurmountable obstacle to its registration as an association. The Masty Regional Executive Committee refused to provide Ales Zarembiuk, the association's founder, with a legal address for the registration of a public organization stating that there were no such vacant premises.

In more than 30 cities and towns of Belarus the local *Young Front* branches applied to their local executive committees to provide them with a legal address and premises suitable for holding a constituent assembly, which are requirements for the registration of an association's local offices; however, all the applications were rejected In February, the Mazyr town authorities refused to assist the *Young Front* in finding a legal address for their local office. The authorities stated that they were prohibited by law to interfere in the activities of public organizations.

In April the Barysau office of the association *Children in Need* was forced to close because of its inability to pay the rent for its state-owned premises. The charity made numerous appeals to the local authorities pleading for subsidized rent but was unsuccessful.

On 18 February the Society for the Protection of Monuments was forced to leave its offices in the center of Minsk, which it had occupied for more than twenty years. The building had been restored in the 1980's at the cost of the association and had once legally belonged to it. In 2004, the state nationalized the building thus turning the former investor into a tenant and in late 2008 finally evicted the Society. Anton Astapovich, the Chairman of the organization feels certain that the hastiness of the eviction was due primarily to the association's attempts to investigate and publicize violations of the laws to protect historical and cultural heritage sites and because of their principled stand on this issue.

Throughout the year, civil organizations continued to experience problems with renting premises, not only for everyday purposes as a legally required address in a non-residential building, but also for special events and extraordinary meetings.

The founders of the BCD Party faced numerous difficulties in finding premises in Minsk in order to hold their constituent assembly, which was scheduled for 28 February. Ten landlords with premises of the requisite size refused their applications (They were turned down by the IBB International Education Center, the Youth Variety Theater, the *Aurora* and *Centralny* cinemas, the Central House of Officers, the palaces of culture of the Belarusian Railroad, MAZ, MTZ, *Sukno* and the Palace of the Republic). When the BCD stated that they intended to hold their

constituent assembly outside in the open air in the center of Minsk, they were allocated premises for the Congress. However, the regional local authorities still interfered with the organization of party's local assemblies that were held to elect delegates to the Congress (in total, 63 meetings were held to elect delegates in preparation for the congress).

The IBB International Educational Center in Minsk agreed to provide premises for the sixth Assembly of Belarusian Pro-Democratic NGOs (6-7 March), a large forum of associations. However, as was the case with the BCD, the regional preparations prior to this meeting were accompanied by numerous difficulties. The Homel regional authorities did not grant permission for a meeting of the associations of the region to be held. The meeting was scheduled to be held in the *Yunatstva* (*Youth*) House of Children and Youth Arts and the director had already orally agreed. The House belonged to the department of culture of the regional executive committee and therefore, to obtain official permission to organize the event in this facility, Uladzimir Katsora the Deputy Head of the Homel city branch of the association *Legal Initiative* had to apply to Mr. Kirychenka, the Deputy Chairperson of the executive committee's ideology department. Mr. Katsora was later phoned by the House director and told that the premises were not for rent due to unspecified reasons.

The 5th Congress of Belarusians of the World which was organized by the *Batskaushchyna* (*Fatherland*) World Association of Belarusians and held on 18-19 July also had difficulties in finding premises for their event, but in the end the Minsk city executive committee agreed to rent them premises.

Meanwhile, many registered associations, as well as groups for the creation of new associations, experienced difficulties in finding premises that were large enough to house meetings. The Human Rights Association *Nasha Viasna* had difficulties in finding premises for another constituent assembly in late April. *Nasha Viasna* was turned down by nearly everyone they approached who could have provided them with premises suitable for a constituent assembly. As a result they were forced to hold their constituent meeting at the BPF office.

The Belarusian authorities failed to comply with the UN Human Rights Committee, which condemned the closures of associations and the refusals to register them as violations of the International Covenant on Civil and Political Rights. The Committee has now passed three resolutions in regards to such violations by the Belarusian govern-

ment — the refusal to register the human rights association 'Helsinki — XXI', the closure by the courts of the Homel Association *Civil Initiatives*; and the closure of the *Viasna* Human Rights Center. Numerous attempts to enforce the UN's decisions through appeals to national courts and to other authorities have been unsuccessful and the organizations continue to work as unregistered associations running the risk of being prosecuted for their activities.

On 23 March the Minsk regional court of appeal dismissed the complaint lodged by members of the Homel Association *Civil Initiatives* (closed down in 2003) against the Ministry of Foreign Affairs. The association's members argued that, in accordance with the resolution of the UN Human Rights Committee, the closure of their association by the Belarusian government was a violation of the freedom of association; however, the Ministry of Foreign Affairs, being the authority responsible for fulfilling Belarus' international commitments, had failed to take any action to restore their violated rights.

In April 2009, Ales Bialiatski, the Chairperson of *Viasna*, received a reply from the Ministry of Foreign Affairs, where he had sought clarification as to what steps the Ministry had taken to implement the UN Human Rights Committee's Views in regards to the withdrawal of the organization's registration. The response, signed by the Deputy Minister of Foreign Affairs, stated that Belarus considered the decision by the UN Human Rights Committee to be a recommendation, which was not legally binding. Thus, the Belarusian authorities confirmed that they were not going to implement the Committee's decisions on human rights violations in Belarus.

One major factor that resulted in a number of steps being taken towards the liberalization of non-governmental associations by the authorities, was the dialogue between Belarus and the EU. This dialogue caused a relative relaxation of state policy and resulted in, for example, the abandonment of the wide-scale use of Article 193-1 of the Criminal Code. But in general, since February 2009, when the EU extended its suspension of sanctions against Belarusian officials, there have been no irreversible changes for the better in regards to the freedom of association: Article 193-1 has not been repealed, no new political party has been registered and the registration procedures of public associations have not been simplified.

The authorities should immediately take a number of measures to restore the freedom of association in Belarus. Article 193-1 of the Criminal Code should be repealed, all legislative bans on the activities of unregistered associations should be lifted, the registration of associations should actually be simplified at least to the same level as that currently used for the registration of commercial organizations and, in order to prove that the procedures have actually been simplified, those parties and associations that have been refused registration as well as those that were closed down by the courts should be registered. It is especially important that the Belarusian authorities implement the decisions of the UN Human Rights Committee concerning their violations of the freedom of association through forced closures and refusals to register public associations.

7. The Freedom of Peaceful Assembly

Article 35 of the Constitution of the Republic of Belarus ensures the civil right to hold street processions, assemblies, demonstrations and rallies that do not violate public order and the rights of other citizens. The organization of such rallies is regulated by the Law *On mass meetings in the Republic of Belarus* (edition of 7 August 2003) and by the rulings of local authorities.

The Law *On mass meetings* contains a number of restrictions that are not necessary in a democratic society and considerably limit the freedom of peaceful assembly. In particular, according to Article 9 of the Law, local executive bodies have the right to determine the places for demonstrations and rallies, as well as the places where they are forbidden. As a result, local authorities ban mass meetings on the central streets and squares of most Belarusian towns and cities (except for parades that are organized by the authorities on state holidays in accordance with Article 3 of the Law). As a general rule, the authorities permit mass meetings in remote parks, squares, stadiums and other places where people do not go, which makes such demonstrations pointless. Such an approach falls short of international human rights standards. In Belarus, organizers of peaceful demonstrations must apply to the local authorities for authorization. The applications must be filed at least 15-days in advance. Holding unauthorized demonstrations is banned and is punished. Meanwhile, local authorities have a wide range of powers over the demonstrations that they authorize. In particular, they can change the date and place of the demonstration or ban it altogether. According to the law, the authorities must provide justification for banning a demonstration. However, local authorities often ban demonstrations without cause and, when rally organizers decide to challenge such decisions in the courts, they are rarely reversed. In 2009 no court verdict was recorded that reversed or found unlawful a ban imposed by a local authorities on a mass meeting.

In May, the Brest city executive committee refused to permit a rally that was to be held on the 10th anniversary of the abduction of Yury Zakharanka, a former Interior Minister who is still missing. In the application, the organizers specified that they wished to hold the rally in the *Locomotive* stadium that the Brest CEC had determined to be the only place for mass meetings. However, the rally was banned under the pretext that a football tournament was to take place in the stadium at the same time.

On 18 August the Minsk authorities banned a rally for the social rights of the population during the economic crisis, which the Minsk city Communist Party of Belarus intended to hold on Yakub Kolas Square.

Such bans affected not only social and political demonstrations, but also demonstrations for animal rights. On 6 July the capital's authorities refused to authorize a demonstration for the protection of animals near the *Fauna Horada* (*City's Fauna*) vivarium on Hurski Street. The Minsk CEC justified its ban with the application's non-compliance with Belarusian law. The activists tried again to obtain permission to hold a demonstration aimed at raising public awareness of the problem of stray animals, but they were unsuccessful. In its justification of 20 August the CEC stated that a demonstration would 'create obstacles to the uninterrupted work of *Fauna Horada* and the veterinary services of the Maskouski and the Frunzenski districts of Minsk'.

Another telling example of the impossibility to exercise the right of peaceful assembly and expression is a series of rallies that the Human Rights Center *Viasna* intended to hold on 10 December in order to mark the 61st anniversary of the Universal Declaration of Human Rights. A total of 12 applications for rallies were filed in different cities in Belarus. Only the application for holding a demonstration in Brest was granted. A.Kandratovich, the Deputy Chairperson of the Kastrychnitski district executive committee in Vitsebsk, gave the following reasons for banning the demonstration: the applicants had chosen a place that had not been allocated by the authorities as a place for mass meetings and they had not made adequate arrangements with the militia, nor with other public services and amenities such as with the Vitsebsk city polyclinic. In Smarhon, the human rights demonstration was to be held opposite the *Cosmos* cinema. In the application filed with the Smarhon district executive committee it was stated that the square in Sadovaya Street was not adequate if the aims of the demonstration were to be achieved because it was too distant from where most of the people of Smarhon would be. Nevertheless, the demonstration was not permitted either near the cinema, or in the place allocated by the authorities. In the Mahiliou city executive committee's refusal that was received by the human rights activists Barys Bukhel and Aliaksei Kolchyn it was stat-

ed that 'the authorization for the demonstration is impossible' because the Mahiliou district executive committee had, by its ruling, allocated another place for the holding of such events. The human rights activists asked for permission to hold their demonstration in the center of the city on a busy square opposite the CEC and not an empty square in the yard of the Palace of Culture that had been set aside by the authorities. Feliks Haliuk, the Deputy Chairman of the Mazyr district executive committee reminded the Smarhon human rights activists in his reply that mass meetings could be held at the *Spartak* stadium in Mazyr and in the *Palesse* stadium in Kozenki. Neither mass meetings nor sporting contests have been held in either place for a long time due to their inconvenient location. The *Yunatstva* stadium and a ski sports and fitness complex were constructed to replace them. The activists were also banned from demonstratiing in Barysau, Homel, Biaroza and Navapolatsk.

Another provision considerably restricting the right to peaceful assembly is the requirement that the organizers pay all associated expenses (including the policing, medical services and cleaning of the site). Thus, this freedom has been made directly dependent on the willingness of citizens to pay all the expenses arising from the holding of such an event. The rules for the payment as well as the amount are set by the appropriate rulings of the local authorities (Articles 6 and 10 of the Law). In a number of cities the local authorities require payment in advance of the demonstration. Human rights activists from Baranavichy appealed in court against the city executive committee ruling of 17 January 2006 #4 *On the order of holding mass meetings in the city of Baranavichy*, that demanded, contrary to the law, that the associated expenses be paid before the beginning of the demonstration. In their lawsuit the human rights activists demanded that the practice of paying for mass meetings be completely abolished. On 30 April Mikalai Silmanovich, the Judge of the Baranavichy district court, dismissed the case. Later his verdict went to appeal at the Brest regional court. However, the case was not heard in court because by that time the Bararanavichy CEC had issued a new ruling to replace Ruling #4. The new ruling no longer demanded preliminary payment of the expenses for mass meetings. Nonetheless, human rights activists are still dissatisfied with the outcome, as the situation has not really changed. 'We asked the Brest regional panel of judges to introduce a proposal to amend the Law *On mass meetings*. This law is unconstitutional. We shouldn't have to negotiate with the militia, the Ministry of Emergency

Situations, or other government bodies. That should be the job of the authorities, because every employed citizen pays the taxes which pay for both the state and its officials.' stated the human rights activist Siarhei Housha.

Throughout 2009, peaceful assemblies were often held without permission from the state authorities. In the first half of the year the authorities stuck to the tactic of terminating such meetings by pushing the participants out of busy roads, disbanding them with the riot squad and arresting people without subsequent trial. This created the impression that there was less repression, though the number of detainees did not decrease in comparison with the corresponding period of the previous year. These tactics were adopted primarily because of the negotiations between the Belarusian authorities and the European Union and its heightened attention in regards to the events taking place in Belarus. The situation changed in the second half of the year, when the authorities started using more violent coercive methods for dispersing peaceful demonstrations and started subsequently bringing criminal charges against the participants. The riot squad often acted in a high profile manner accompanied with the use of physical force and full riot gear and they obstructed the journalists who were present at such demonstrations in their work. One demonstration that was violently dispersed was the traditional 14 February rally held by the *Young Front*. The demonstrators who gathered on Yakub Kolas Square were dispersed by militia in full riot gear with the use of force. The militia acted in an evidently disproportionate and violent manner. Excessive physical force was used against the demonstrators many of whom were girls and children. It's worth noting that the militia didn't arrest the participants in the demonstration, but only beat them. As a result several of the demonstrators applied for medical aid: Zmitser Dashkevich, Mikola Dzemidzenka and Pavel Kuryianovich went to the Minsk regional hospital in Barauliany.

The authorities reacted violently to demonstrations of solidarity with the families of political activists who had gone missing and to demonstrations in support of political prisoners and in support of the victims of repression. On 1 May the riot squad beat up participants of a peaceful demonstration of solidarity with the Vaukavysk entrepreneurs, Mikalai Autukhovich, Uladzimir Asipenka and Yury Liavonau. The demonstration was held next to the remand center in Valadarski Street in Minsk where they had been kept in custody since February. The demonstra-

tors stated that they had come there in support of those who had been arrested and especially of Mikalai Autukhovich who had gone on indefinite hunger-strike which now threatened his life. 10 minutes after the beginning of the demonstration a patrol van full of men from the riot squad arrived. The militia surrounded the people and attempted to push them away from the prison walls. The demonstrators sat down in protest, holding portraits of the men under arrest in their hands. The militia surrounded the sitting people and didn't let them move. Then they began forcibly pushing the protesters away from the prison, hitting them in the kidneys and on their backs and legs. The militia pushed the demonstrators to the *Frunzenskaya* metro station, hitting and insulting them all the way.

On 7 May a demonstration was held in Minsk to mark the 12th anniversary of the disappearance of Yury Zakharanka, a former Interior Minister. About 150 people lined up along Nezalezhnastsi Avenue holding portraits of Yu. Zakharanka and the arrested entrepreneurs. They chanted 'Freedom!', 'Freedom to political prisoners!'. The riot squad formed a line opposite the demonstrators. Soon about 30 demonstrators had been arrested and were being held at the Centralny militia station in Minsk, where they had their mugshots taken and were fingerprinted. Afterward the demonstrators were let go. Anatol Liabedzka, the leader of the United Civil Party, was detained as a preemptive measure before the demonstration began.

7

The demonstrations that took place on 9 and 16 September on Kastrychnitskaya Square in Minsk were dispersed in an especially violent manner. On 9 September, a large group of people came out onto the square with the intention of protesting against the arrival in Belarus of troops from the Russian Federation in order to take part in joint Belarusian-Russian military maneuvers. The demonstration was peaceful. However, several minutes after it began the riot squad arrived and started arresting its participants with the use of physical force. Some young activists (including Zmitser Dashkevich, the leader of the *Young Front* and Siarzhuk Karpovich, a member of the *BPF Youth*) had previously been arrested by plain-clothed militiamen on the way to Kastrychnitskaya Square. All detainees (17 people) were held in the Centralny militia station where charges under Article 23.34 of the Administrative Code (the violation of the order on the organizing and holding mass meetings) were drawn up against all of them. Zmitser Dashkevich was also charged under Article 17.1 (disorderly conduct). Then the detained activists were transferred to the remand center on Akrestsin Street for

the night. In the morning they were taken to the Centralny district court of Minsk. All three floors of the court were filled with the riot squad. Neither journalists, nor relatives of the detainees were admitted to the trials. It was impossible to lodge a complaint with the court Chairman concerning defects of proceedings as nobody was admitted to his office. Having telephoned the court, Valiantsin Stefanovich, human rights activist, was allowed to make an entry in the book of complaints. He wrote that there wasn't any information in the court about the judges and the cases they were to consider, which was a violation of the current legislation, in accordance with which all trials must be open to the public.

On 16 September, the 10th anniversary of the disappearance of politician Viktar Hanchar and businessman Anatol Krasouski, a peaceful demonstration took place in Kastrychnitskaya Square in Minsk. A large group of people held portraits of the missing people. Several minutes after the beginning of the demonstration the riot squad and plain-clothed officers started arresting the demonstrators. 31 people were arrested and held at the Centralny militia station. After three hours they were released without charge. While the arrests were taking place, plain-clothed officers obstructed the work of journalists. In fact, each journalist was surrounded by a number of plain-clothed officers who covered their lenses and pushed the journalists away to prevent them from taking photos and from shooting video. Following these events, the Belarusian Association of Journalists (BAJ) addressed Mikalai Kulik, the Minsk Prosecutor and Anatol Kuliashou, the Interior Minister. The journalist association asked the prosecutor to ensure 'that those who ordered and carried out the obstruction of the journalists in their work are punished' and 'demand that the main militia bureau of the Minsk city executive committee and other law enforcement agencies unconditionally implement the requirements of the law *On Mass Media*'. However, neither the prosecutor's office, nor the Ministry of Internal Affairs found that the militia had violated journalists' rights in any way. Answering the BAJ accusations, Yauhen Paludzen, the Deputy Interior Minister, stated that special guidelines had been drawn up for the regulation of relations between the militia and journalists 'during measures taken to secure public order at unauthorized mass meetings'. According to these guidelines, journalists are banned from taking close-ups of the militia and demonstrators without permission and would receive all relevant information from the press officer who would be present at the demonstration wearing a blue vest. The Minister's statement came in for heavy

7

criticism from both the journalistic community and human rights activists who pointed out that rights of journalists were determined by the Law *On mass media* and not by some MIA guideline. Similar arrests took place in other towns and cities of Belarus. Three youths were arrested in Lida on 25 April for holding a demonstration against the construction of a nuclear power plant in Belarus. Two of them, Hanna Bunko and Yauhen Rudoi, were residents of Lida. The third one, Yauhen Skrabets, came from Brest. The activists unfurled a banner with the slogan 'No to a New Chernobyl'. Soon afterward the militia arrived at the site of the demonstration.

On 26 April, the 23rd anniversary of the accident at the Chernobyl nuclear power plant, the militia arrested five activists who had been intending to walk along Lenin Street starting from Svabody Square. However, at their gathering point the activists were met by militia headed by Aleksandr Kalinouski, the Chairperson of the public security department of the Kastrychnitski militia station in Vitsebsk. The militia checked the demonstrators' documents and searched through their personal belongings. They found T-shirts with anti-nuclear symbols that the activists had intended to put on at the beginning of their procession. They were arrested and held at the Pershamaiski militia station under the pretext that the militia needed to check whether there was any connection between them and a number of crimes that had recently been committed in Vitsebsk. Siarhei Kavalenka, a member of the conservative Christian party, the Belarusian Popular Front, and Valery Misnikau were held at the Kastrychnitski militia station in Vitsebsk as 'suspicious persons'. Siarhei Kavalenka had been intending to walk along Lenin Street with a white-red-white flag. He held in his hands two long wooden poles to which he intended to attach the flag, which he hadn't even managed to take out of his pocket before being arrested.

On 7 May in Homel the militia arrested civil activists Uladzimir Katsora, Vasil Paliakou, Piatro Kuzniatsou and Yury Zakharanka for participating in a demonstration marking the 10th anniversary of the disappearance of Yury Zakharanka, the cousin of the latter of the detainees and the former Interior Minister. All the detainees were charged under Article 23.34 of the Administrative Code. Maryna Damnenka, the Judge of the Centralny district court of Homel, fined the three of them BYR 350,000 and Uladzimir Katsora was sentenced to 3 days in prison.

A number of individual appeals were made to the UN Human Rights Committee due to violations of the civil right to peaceful assembly in Belarus. In January 2009 Iryna Laurouskaya, Raman Kisliak and Dzianis Turchyniak applied to the Brest city executive committee (CEC) for permission to hold a demonstration between 15-17 January in Gogol Street, not far from the monument celebrating the 1000th anniversary of Brest. The demonstration was to express their disagreement with the design of the monument and against other issues regarding the preservation of historical heritage. They received a refusal signed by Mr Khafizau, the Deputy Chairperson of the Brest CEC, in which it was stated that such demonstrations could only be held at the *Locomotive* stadium. The activists didn't agree with the decision of the CEC and went to court to fight the decision of *Locomotive* being the only place where mass meetings could be held. However, each court they appealed to ruled in favor of the authorities. So I. Laurouskaya, R. Kisliak and Dz. Turchyniak appealed to the UN Human Rights Committee. They stated that their rights to peaceful assembly and to self expression had been violated, they had been discriminated against because of their convictions and their right fair trial had also been violated by the Belarusian courts.

The only improvement in the situation regarding the right to peaceful assembly in 2009 was the introduction of amendments to the Electoral Code that regulated the procedures for holding mass rallies organized by presidential or parliamentary candidates or their proxies. In particular, the Electoral Code was supplemented by Article 45.1 that allows for a simplified procedure when notifying the authorities of such an event. In accordance with the new rules, presidential or parliamentary candidates or their proxies must notify the local executive body in whose region the rally is to be held at least two days in advance. Moreover, no permission is needed for collecting electors' signatures at such rallies provided they are held in places where they have not been banned by the local executive body.

Thus, the freedom to peaceful assembly remained very limited in 2009. the practice of preemptive arrest was widely used. Participants of peaceful demonstrations were persecuted by the administration. Physical force and riot gear were often used against them. The freedom to peaceful assembly is only possible with systematic change which includes amending the current Law *On mass meetings* and bringing it into line with international standards on human rights.

7

8. Pressure Exerted by the Secret Services on Citizens for their Social and Political Activities

The secret services continued collecting information and pressurizing citizens because of their social and political activities. Primarily the State Defense Committee (KGB) have traditionally been responsible for investigating and intimidating the activists of opposition parties, informal youth groups, civil associations and representatives of the independent media. The KGB do this even when the political activities of those they are investigating are in accordance with the governing legislation and presented no danger to state security. (These people are not extremists and do not pursue anti-constitutional objectives or the like.)

In the majority of cases, KGB officers held unofficial talks and meetings that broke procedural protocols. Citizens were not explained their rights and were not told that according to Article 9 of the Law of the Republic of Belarus *On the State Security Committee*, they only need cooperate with secret services of their own free will. During such talks, citizens were often threatened with dismissal from work or expulsion from educational establishments. Conversely, KGB officers also promised to help people in their education and employment and solve some of their administrative problems if they agreed to provide them with information about the activities of some organization or group. As a rule, such 'meetings' took place in the workplace or at the person's educational establishment. The most effective means of resisting KGB coercion were informing the media who would publicize such cases or informing human rights organizations.

On 15 January two KGB officers had a talk with Aleh Pronski, an activist from the *For Freedom* movement, in the office of the deputy dean of the Hrodna State Agrarian University. During the talk they tried to intimidate the activist and to recruit him. 'We talked for about an hour. At first they said that I had ruined my own life, as they were going to send me to a special missions unit and then that they would recruit me into the KGB. Then they said that my colleagues from *For Freedom* were buying cars, houses and ties for $50 and they presented a detailed description of what I had done. They gave me three choices. I could stop

my activism, after which they would leave me alone and I wouldn't be assigned to work in the Homel region [an area that is radioactively polluted]. Secondly, I could tell the press about our talk and continue my activism, then I would be assigned to the Homel region and would totally ruin my own life. Thirdly, I could cooperate with KGB and get a nice career out of it,' A. Pronski told *European Radio*. Some time before the talk, the university dean also advised Pronski to cease his political activities, threatening him with assignment to an area that was radioactively polluted.

On 19 January KGB tried to recruit Pavel Liashkevich, a first year student studying information technology and administration at the Belarusian State University of Information Technology and Radio Electronics. 'At first the dean phoned me and summoned me to his office. When I entered, there were two other people there. Then the dean left. The strangers asked me if I knew who they were. Then they asked me about my politics. When I said that I wasn't interested in politics, they went to my web-page and showed me that many of the friends I had on-line were opposition members. They gave me an ultimatum: either I could continue my studies working for them or I would be expelled from the university. They looked through my passport. They were especially interested in what I had been doing abroad, though all I had done was gone on holiday to Poland with my parents. They kept on telling me to sign this piece of paper that said I would work for them under the pseudonym *Artsiom* and that they would control me. They even offered me 'financial aid' and 'support in my studies'. When I said that I didn't need any money they answered that there was nobody that didn't need it. They asked whether I wanted to join the *Young Front* and they proposed that I file my application on the organization's website, but first I would have to phone the KGB beforehand and work for them as a *Young Front* member,' said Pavel. He refused to sign the paper.

On 8 May KGB officers came to the factory where Anton Rusin, a member of the *Young Front*, worked. When Rusin asked them who they were, one of them answered 'I will tell you who I am in a manner that will get you fired and you won't find a job anywhere else'. The strangers questioned him about the *Young Front*, its leaders and the march *For Independence!* that they were planning. A. Rusin refused to answer their questions.

On 24 April in Homel, a KGB officer came to the college where Dzianis Siaskou studied. He asked the youngster about his political

activities and his relationship with Andrei Tsianiuta (a *Young Front* activist). 'He paid a lot of interest to Andrei Tsianiuta: he asked about who he talked to, where he worked, who his friends and acquaintances were, what he did in his spare time and all sorts of other things about him,' said Dz.Siaskou.

On 25 April KGB officers paid a visit to the school in the Minsk district where Raman Khaniauka, the father of the *Young Front* activist Vadzim Khaniauka, worked. They started filming him on video in front of his pupils. The KGB officers asked the teacher about what he thought of the activities of his son and told him to answer that he was unhappy about his son joining the *Young Front*. When Raman Khaniauka asked why they were doing this, they told him that they were shooting a documentary about the *Young Front* and about those parents who were unhappy with their children's involvement in it. Afterward a similar 'filming crew' burst into the apartment of the parents of Zmitser Dashkevich, the *Young Front* leader and soon after, state TV broadcast a propaganda movie entitled *Young Front. Kidnapping*. The film had been made in close cooperation with the KGB who had provided the director with all his information and helped him burst into people's private apartments.

The secret services have always paid a lot of attention to the activities of journalists, especially when they work with foreign media. Journalists who work for *Radio Racyja* or the satellite TV channel *BelSat* (both of which operate from Poland) face more pressure from the KGB than any others.

On 29 April, officers of the Hrodna regional KGB bureau issued an official warning and threatened journalist Ivan Roman with criminal proceedings. The KGB were especially concerned by the journalist's articles on the economical plight of many Belarusian companies. 'I was told that I could write positive things about such matters, as anything negative would discredit the Republic of Belarus in the eyes of foreign media,' stated Mr I. Roman. The journalist was also told that he had been on a KGB «VIP list» since 24 April 2009 and that he should draw the appropriate conclusions from that information. When Mr. Roman asked whether criminal charges had been brought against him, the KGB officers answered they could be at any time. After the warning, Mr I. Roman and the Belarusian Association of Journalists applied to the head of the Hrodna regional KGB bureau for an explanation as to why he was being investigated. They also demanded an explanation as to

why the KGB believed that he was providing foreign media with false information. Mr I. Roman demanded that The journalist asked the KGB to provide concrete examples of misinformation from his articles. However, this request was ignored and Mr I. Roman was once again warned that he would face criminal prosecution if he continued with his activities. 'The head of the Hrodna regional KGB bureau stated in his answer that I am not under investigation. However, the official warning on the KGB website states that an official investigation had established that I worked for the foreign press and had provided them with inaccurate information', said Mr. Roman.

There were further developments in the 2008 lawsuit involving *ARCHE* magazine, in which the KGB had insisted that a number of articles in editions 7 and 8 concerning the Belarusian parliamentary elections were of an extremist nature. On 25 February, Tatsiana Miraniuk, the Judge of the Maskouski district court of Brest, sided with the KGB and declared the publications extremist. However, on 7 May a panel of judges from the Brest regional court overturned the verdict and sent the case back for a retrial. On 25 June the Maskouski district court of Brest dropped the case 'because the plaintiff had decided to drop the charges'.

The secret services continued to place pressure on the leaders of youth organizations and a number of kidnappings where the victim was dumped outside Minsk were registered in 2009. Some of these incidents took place just before demonstrations and can be regarded as an extension of the policy of arbitrary preemptive arrest.

In all of these kidnappings the youths were pulled off the street often near their homes by men in civilian clothing. The detainees were forcibly pulled into a car. Then hoods were pulled down over their heads. Most abductees said they heard militia radios in the car. In some cases the abductors hinted that the kidnappings were a direct result of the victim's political activities. The men drove the activists into the forests outside Minsk and left them there. Sometimes they also took away the activists' mobile phones. Grabbing people off the street, abducting them and dumping them in the forest is clear intimidation and was intended to put the activists under psychological pressure. Criminal investigations were instigated on the complaints of those who had been kidnapped, but those responsible were never found or punished.

On 25 March, several hours before the demonstration that marked Freedom Day, Nasta Palazhanka and Dzianis Karnou, two *Young Front* activists, were seized near the *Kamennaya Horka* metro station in Minsk

by unidentified men in civilian clothing and driven out of Minsk. Mr Karnou was beaten. His jeans were cut into strips with a knife and all his money was taken away from him. Criminal investigations were instigated on the complaints of the victim, but those responsible were never found nor punished. The fact that Nasta Palazhanka and Dzianis Karnou identified the man who was giving orders to the other kidnappers from a photo demonstrates the ineffectiveness of investigative bodies and their reluctance to prosecute the guilty. It was Aleksandr Lemanenka, an officer in the MIA anti-terrorist unit *Almaz*.

On 27 November, on the eve of the demonstration to mark the anniversary of the anti-Bolshevik uprising in Slutsk, Uladzimir Lemesh, an activist of *European Belar*us, was seized by unidentified people in the center of Minsk. He was handcuffed and a hood was pulled down over his eyes so that he couldn't see the road. He was driven out of Minsk by a car without number plates. His passport, mobile phones and a white-red-white flag and portraits of the leaders of Slutsk uprising were confiscated. He was dumped about 25 kilometers away from Slutsk.

On 5 December two strangers assaulted Zmitser Dashkevich, the leader of the *Young Front*, near his apartment. They pulled him into a minibus and pulled two hoods over his head. Then he was driven away in an unknown direction. He was later dumped in a forest. A pole was passed through his overcoat to prevent him from moving for a certain time. Then the hoods were taken off his head and the car drove away. Later,it turned out that the youth leader had been driven 70 kilometers away from Minsk.

On 6 December Yauhen Afnahel, an activist from the civil campaign *European Belarus*, was seized by men in plain clothes in Bialinski Street in Minsk. He was pushed into a car and ordered to put his head between his knees. He was driven around the city for about 20 minutes, after which the car drove onto the Barysau highway. After several kilometers the car stopped and the kidnappers ordered Mr Afnahel to get out. Before driving off they took away the battery from his mobile phone.

It is clear from the testimonies of the victims, from the conspicuous manner of the crimes and from the impunity of those responsible that these kidnappings must have been arranged by the secret services with the cooperation of other law enforcement agencies and were intended to intimidate youth leaders.

In 2009 there were recorded cases of other methods being used to intimidate civil and political activists. One such method was a thorough

customs search of members of the opposition when they crossed the border. In particular, for more than a year (from the spring of 2008 till July 2009) Ales Bialiatski, Chairperson of the Human Rights Center *Viasna* and the members of the *Viasna* council Uladzimir Labkovich and Valiantsin Stefanovich were on a list of people who were always searched by customs every time they crossed the border of Belarus. This included the search of personal belongings and vehicles that was performed by customs officers at border crossings or at the airport. In accordance with the regulations after each customs search a report is drawn up, a copy of which is handed to the citizen. The usual reason for such searches was an order given to the chief customs officer; however, those people searched were never informed what that order was nor why they were picked out. This information was also absent in the replies to written letters that were sent to the state customs committee and the state border committee. However, one member of *Viasna* did manage to find out what order had been given to the head of the border service and he learned that the customs searches were to check that he was not carrying large sums of money (more than $1,000) or any printed materials that opposed the state system of the Republic of Belarus. The customs searches were carried out on the orders of Minsk and the Minsk regional KGB bureau. This means that civil leaders were under investigation and were not informed of the reasons.

8

9. Unlawful Conscription into the Army in order to Remove Socially and Politically Active Youth

Conscription into the army as a method of silencing and removing politically active critics was practiced in the time of the USSR. In contemporary Belarus, this form of repression of politically active youth first came into use in 2008 and it is very convenient for the authorities as the draft is a legitimate provision of Belarusian law. However, in a number of cases conscription is better classified as a form of political repression used for removing youth activists from society.

Such cases have a number of things in common, which are:

- the conscripts are active participants of political youth organizations and have been regularly subject to various forms of persecution for their activities (received administrative or criminal punishments);
- the majority of such conscripts have been expelled from educational establishments before being drafted. Generally, the expulsions were not due to poor academic performance and but due to 'breaches of the educational establishment's rules and regulations' (missing classes, receiving punishments from the administration, etc.);
- the majority of conscripts had been excused from military service on medical grounds. However, later the findings of their original medical examinations were reviewed by military enlistment offices who then appointed new ones. These new examinations took place under KGB surveillance, their proceedings were not transparent and they were often held in military hospitals run by the Ministry of Defense of the Republic of Belarus;
- the conscription took place under the surveillance or with the participation of the KGB and was accompanied by arrests after which the youths would be forcibly taken to military enlistment offices and military units;
- complaints against the conscription procedures were often considered to be in breach of the Civil Process Code of the Republic of Belarus.

The review and reappraisal of the conscript's medical fitness for military services are especially revolting.

The practice of conscripting political activists into the army continued in 2009 and was accompanied with a propaganda campaign in state media including on television, radio and the internet. A total of six opposition activists from youth organizations were drafted into the army this year: Ales Krauchenia, an activist from the youth organization *Bunt*; Franak Viachorka, a former Chairman of the *BPF Youth*; and Zmitser Khvedaruk, Ivan Shyla, Yauhen Skrabets and Andrei Tsianiuta, members of *Young Front*.

Franak Viachorka, a former Chairman of the *BPF Youth*, was found unfit for military service in July 2009 by a ruling of the Savetski district draft board of Minsk. Later this ruling was overruled by the Minsk regional draft board that gave Viachorka a deferment till March 2009. However, on 8 January the youth leader was arrested by men in civilian clothes in a private house in the town of Rakau and taken to the Savetski district draft board. Then two militiamen and a man in civilian clothes escorted him to a military hospital run by the Ministry of Defense where a new medical examination was conducted. Neither Franak, nor his parents were informed of its results.

On 16 January, before the end of the medical examination, Franak Viachorka was forcibly detained by men in civilian clothes. He was handcuffed and held at the Savetski district military office where he was informed that the draft board had found him fit for military service and he that he would be sent to a military unit. On 19 January Franak appealed against the ruling of the draft board. He asked the court to find the ruling of the Savetski district draft board preterlegal and to suspend the implementation of the ruling till his lawsuit could be heard. In accordance with Article 36 of the Law *On military duty and military service* of 22 July 2003, if a person appeals to a court against the implementation of a ruling of a draft board, the ruling must be suspended till such time as the court passes its verdict on the case. In accordance with Article 340 of the Civil Process Code of the Republic of Belarus, any act by the state prescribed by law that has been appealed against must be suspended (in this case the law *On military duty and military service*).

Having accepted the complaint, E. Yakubouski, Judge of the Savetski district court of Minsk, suspended the ruling of the draft board. However, on 23 January, the judge threw out the appeal and ruled to end the suspension on the ruling draft board, referring to Article 257 of the

Civil Process Code (replacement of one provisional remedy with another, or cessation of a provisional remedy). However, the legal proceedings on such cases are regulated by Article 29 of the Civil Process Code (legal proceedings on the cases arising from administrative legal relations) and neither Article 340 of the Civil Process Code, nor Article 36 of the Law *On military duty and military service* give the courts the power to end the suspension of an act that is being appealed. Thus the latter court ruling was unlawful, as the ruling of the Savetski district draft board should have been suspended till such time as the court passed its final verdict on the case (since the activist could have appealed against the court verdict this could take place only after a considerable period of time).

Moreover, the consideration of Viachorka's lawsuit was conducted in the absence of the plaintiff and his lawyer who were not informed about the time and place of the trial. This is a serious violation of the Civil Process Code and is grounds enough to reverse the court's verdict. However, on 26 February the Minsk city court threw out the appeal against the verdict of the Savetski district court. On 28 January F. Viachorka was arrested on the street by plain-clothed officers, handcuffed and taken to a military unit in Baranavichy. He was beaten while being escorted there.

On 23 March, the Minsk intergarrison court dismissed Viachorka's suit and found that the actions taken by military officers and medical staff during his conscription had not been unlawful.

On 12 May the appeal against the verdict of the Minsk intergarrison court was not granted either. By this time the prosecutor's office began to investigate the legality of actions of duty officials during the drafting of F. Viachorka into the army. Lieutenant-colonel of justice A. Vasiliuk, Deputy Prosecutor of the Minsk intergarrison prosecutor's office, refused to instigate criminal proceedings against officers of the Savetski district military enlistment office and the Main military clinical medical center #432 for the use of violence and the abuse of their powers. At the same time, the prosecutor's office released the files that concerned the use of violence by the militia including unidentified plain-clothed officers and submitted these materials to the competent state bodies.

The military prosecutor's office held an examination of F. Viachorka in the military unit in Baranavichy and established that: 'According to expert testimony #263 of 30 January 2009, during the examination of F.V. Viachorka on 29 January 2009 they found a bruise on the anterointernal surface of the right shoulder, a bruise and a small wound on the posterior surface of the right forearm in the projection of the right radiocarpal joint, bruises on the back surface of the right palm in the projection of the body of the third carpal bone, on the exterior surface of the left shoulder, on the posterior surface of the left forearm in the projection of the left carpal joint and on the anteroexternal surface of the right shin. These 7 bodily injures could have been caused by at least 6 blows with blunt objects, taking into consideration that some of these injuries could have been received at the same time (…). It is not ruled out that the aforementioned bodily injures could have received in the time and the circumstances stated by the victim.'

In 2008, Franak Viachorka, the then Chairman of the BPF Youth, was expelled from the faculty of journalism of the Belarusian State University despite good academic performance. The fact that his removal from society was politically motivated and planned in advance is evidenced by his expulsion from the educational establishment, as well as the disregard by the court for the Civil Process Code while considering his lawsuit and other similar cases of youth leaders being conscripted.

Zmitser Khvedaruk, an activist of the *Young Front*, was detained by officers of the Pershamaiski militia station in Minsk on 28 January in his own apartment. The detainee was held in the detention center on Akrestsin Street. The formal reason for the arrest was that he had not served a 15-day sentence imposed by the court eight months before. Article 13.6 of the Process-executive Code precisely determines the term in which penalties on administrative cases may be implemented — 3 months. Thus the young activist's arrest was completely unlawful. His detention was used to take Khvedaruk to two commissions. One was medical and the other was a draft commission The proceedings of these commissions were closed and were held in the presence of plain-clothed officers. The medical commission declared Z. Khvedaruk fit for military service, after which he was sent to a military unit. Several days afterward, he was admitted to hospital due to a chronic illness. The appeals against the ruling of the draft board were dismissed by the courts. Having considered Khvedaruk's suit against his unlawful detention in the delinquents' isolation center, the Pershamaiski district prosecutor's office of Minsk demanded that the head of the Pershamaiski militia station took measures to ensure that such violations did not happen again in future. At the same time, the prosecutor's office 'did not find any significant legal violations' after its investigation into the circum-

stances of his arrest. The identities of the people who had conducted the unlawful arrest of Z. Khvedaruk were not established and those responsible were not brought to legal account.

In 2007 Zmitser Khvedaruk was criminally charged under Article 193.1 (the participation in or the organization of the activities of a political party, civil association or fund that had not gained state registration in accordance with the rules established by the law) with acting on behalf of the youth organization *Young Front*. His draft into the army may be considered a continuation of his harassment by the authorities for his active role in society.

Ivan Shyla, a Deputy Chairperson of the *Young Front*, was detained by the militia late at night on 28 January. He was held in the military enlistment office, where the draft board found him fit for military service. The same night the militia escorted I. Shyla to a military unit in the Lepel district of the Vitsebsk region. Earlier, in November 2008, the draft board had found him unfit for military service on medical grounds. However, in January 2009 these findings were reviewed. The appeals made against the ruling of the draft board came to nothing. On 3 December 2009, having served ten months in the army, Ivan Shyla was discharged from the military on medical grounds.

In September 2007 Ivan Shyla had been found guilty under Article 193.1 of the Criminal Code for acting on behalf of the *Young Front*. In June 2008 he was expelled from secondary school #4 before his final examinations. He appealed against his expulsion in court, but without success. As a result, Ivan Shyla was deprived of the opportunity to finish his secondary education and enter higher educational (as a result of which he could have received a deferment from military service on educational grounds). He was allowed to take his final examinations and receive a school leaving certificate only in the summer of 2009 after numerous appeals to the Ministry of Defense.

Ales Krauchenia, a member of the youth organization *Bunt*, was drafted into the army in January 2009. In the summer of 2008 he had been excused military service on medical grounds. However, in January 2009 he was suddenly summoned to another medical examination, at which all previous diagnoses were overturned. A few days later Krauchenia was sent to the railway military unit in the Asipovichy district of the Mahiliou region. In the summer of 2008 Ales Krauchenia had been expelled in his fourth year from the faculty of engineering in Baranavichy State University.

On 21 September Yauhen Skrabets, a *Young Front* member from Brest, was drafted into the army and directed to the railway military unit in the town of Zhlobin in the Homel region. Before this, he had received a six-month deferment from military service on medical grounds, but new medical and draft commissions were held. They reviewed their earlier diagnoses and found him fit for military service. Yauhen Skrabets has been regularly victimized by the secret services due to his political activities. In 2009 he was a correspondent for the Belarusian *Radio Racyja* (that operates from Poland).

Andrei Tsianiuta, a Homel member of the *Young Front*, was found fit for military service and drafted into the army on 22 September. His military service had been deferred because he was studying in the Bryansk Agricultural Academy in the Russian Federation. In July Tsianiuta was summoned to the military enlistment office, where he was informed that his deferment had been annulled due to his expulsion from the college. This was a surprise to the activist, as he was not behind in his studies and nor had he been admonished by the college administration. His appeal to the Ministry of Education of the Russian Federation against the expulsion brought no results. At first A. Tsianiuta was diagnosed with a number of illnesses listed by the Ministry of Health Care and the Ministry of Defense making him unfit for military service. However, when his medical and draft commissions were repeated these diagnoses were reviewed, after which he was sent to the motorized infantry unit in the town of Polatsk (Vitsebsk region). Soon afterward he was transferred to the airborne troops, which is a cause for special concern, as serving in such units is usually associated with great physical stress.

Andrei Tsianiuta had been regularly subject to detentions and administrative arrests for participating in peaceful demonstrations and expressing his views. In 2007-2008 criminal charges were brought against him under Article 193.1 by the Homel regional KGB.

The circumstances that accompanied the drafting of the young activists into the army and the events that preceded them (harassment, detentions, expulsions from colleges and civil and criminal charges) show that their conscription was politically motivated and instigated by the secret services in order to remove these specific youth movement activists from society.

9

10. Torture and Other Kinds of Cruel and Inhuman Treatment

According to Article 25 of the Constitution of the Republic of Belarus, no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; or to any medical experiments without his or her consent. This provision is also valid in all exceptional circumstances (such as a state of war, a threat of war, or internal political instability).

The inadmissibility of torture and the responsibility for its usage is also enshrined in the laws and normative acts of the Republic of Belarus. In particular, paragraph 3 of Article 11 of the Criminal Process Code (CPC) states the inadmissibility of evidence obtained through coercion and other cruel or degrading treatment in a trial. Article 12 of the CPC prohibits any actions that humiliate the honor and dignity or present a threat to the life or health of those participating in criminal legal proceedings. The evidence thus acquired is dismissed and material compensation for such injuries is paid in accordance with the provisions of the CPC. However, despite the fact that the legislation of the Republic of Belarus bans the use of torture and other kinds of cruel treatment by officials, it provides no definition of what 'torture' is.

On 13 March 1987 the Republic of Belarus (at that time — the Belarusian Soviet Socialist Republic) ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention came into effect on 26 January 1987. However, while signing the Convention the BSSR stated that it did not recognize the Committee, instituted by Article 20 of the Convention (the Committee charged with investigating evidence of torture and visiting member States, etc.). This reservation was withdrawn by the Republic of Belarus on 20 July 2000. However, the state did not issue a separate statement that it now recognized the competencies of the Committee under Articles 21 and 22 of the Convention (concerning reports to the commission submitted by State Parties and private individuals). Belarus has not joined the Optional Protocol to the Convention (adopted by Resolution 57/1999 of the UN General Assembly of 18 December 2002 that came into effect on 22 January 2006), the main aim of which is to establish a system of regular inspections by international bodies of the

places where prisoners are kept in order to prevent torture or other cruel, inhuman or degrading treatment or punishment. Human rights organizations in Belarus insist that Belarus both recognize the Committee against torture under Articles 21 and 22 of the Convention and sign the Optional Protocol to the Convention.

In 2009, there were numerous cases registered in which the participants of peaceful demonstrations were tortured. The militia were especially violent towards those arrested on 9 and 16 September.

On 9 September a large number of people protested in Kastrychnitskaya Square in Minsk against Russian military forces entering the country for joint Belarusian-Russian military operations. The protesters came into the square with the banners stating 'Russian Army Go Home!'. The riot squad arrived in the square and used physical force to arrest the demonstrators. The beatings continued in the patrol van, where some of the detainees were thrown down to the floor and beaten. Some of them were threatened with rape (one of those arrested was threatened with public male rape) and insulted with obscene language. The beatings continued at the Centralny militia station in Minsk. There detainees were lined up facing the wall and were left standing there for three hours. When one of them requested an ambulance the militia refused. Then they were held overnight in the detention center on Akrestsin Street. The following day all 17 detainees were taken to the Centralny district court of Minsk and were charged with violating the order on holding mass meetings. Some of them had visible bruises and injuries from the beatings. in particular, Zmitser Barodka's nose was smashed and bleeding, Maksim Serhiyets had a cut eyebrow and Viktar Ivashkevich had a bruise on his face.

The same thing happened on 16 September, during the demonstration to mark the 10th anniversary of the disappearance of the politician Viktar Hanchar and his friend Anatol Krasouski. The demonstration was held in Kastrychnitskaya Square of Minsk and was peaceful. The demonstrators did not stop the traffic, the movement of pedestrians or the trade of shops. They only held photographs of the missing people in their hands. Despite this, 31 people were arrested and held at the Centralny militia station where they spent about three hours before being released without charge. Some of them were fingerprinted (unlawfully, because this procedure cannot be conducted without bringing criminal charges). After their release from the militia station, the protestors stated that they had been made to stand facing a wall for three hours. Some

of them were beaten. Mikola Statkevich was ordered by the militia to spread his legs and then they beat him on the back of them and he fell down on the floor. Many detainees reported that the girls had been threatened with rape and many of the militia's remarks could be considered to be sexual harassment.

Six complaints were lodged with the Centralny district prosecutor's office by those who had suffered from the militia's violence on 9 and 16 September. Below are excerpts from some of them.

Excerpt from Aliaksei Sianchyla's complaint concerning the events of 9 September: 'After the detention I was taken into a militia transport vehicle. The riot squad in there threw me down on the floor and ordered me to lie face down. When I tried to raise my head, a militiaman who was standing over me gave it a sharp kick. I felt dizzy and nauseous after that. Despite my protests and me telling them that I suffered from a tumour, I was not allowed to stand up or sit down on a seat. I was kept lying on the floor all the way to the Centralny militia station in Minsk. Meanwhile the riot squad insulted me with obscene language and made remarks that insulted my personal dignity. When the those arrested were taken into Centralny militia station, my face was pushed to the wall. I was feeling very bad because of the kick to the head and so I asked them to call an ambulance. None of the officers of the Centralny militia station there present were wearing their badges with their surnames. They refused to call an ambulance for me. I was feeling extremely bad, so I asked to be taken to a toilet, where I vomited. All this time I sat on the floor near the wall all, as it was too hard for me to stand. The only thing I was allowed to do was to go into the hall and sit on a seat with my head between my knees. There again I asked them to call an ambulance and received another refusal.'

Excerpt from Maksim Serhiyets' complaint concerning the events of 9 September: 'I was thrown into a transport and pushed down on the floor. Several militiamen in riot gear started kicking me in the head and body. They demanded that I lay with my head down on the floor. When I tried to raise my head, they kicked it. They also crushed my throat while simultaneous pressing down on my eyes. As a result of these blows they cut my eyebrow and it started bleeding. However, they continued to hold me on the floor, periodically stepping on my head and body. Throughout this time, they were continually insulting me with obscene language and humiliating my personal dignity. When I demanded that they stop their unlawful actions they twisted my arms behind my back

and handcuffed me in such a way as to cause me severe pain. Then a militia officer in riot gear (later I learned it was Kruchenia Uladzimir Vasilyievich) stepped on my hands. I was held in this position all the way to the Centralny militia station in Minsk. (…) On 10 September 2009 I was held to the Centralny district court of Minsk for trial on charges under Article 23.34, part 1 of the Administrative Code of the Republic of Belarus. The other detainees and I were held in one of the court rooms before the trial. When it was only A. Sianchyla, Z. Dashkevich and me who were left in the room, one of the militia officers, a senior lieutenant, started beating Z. Dashkevich, smacking him in the face with his palm. After my demands that he stop his unlawful actions, he turned on me and hit me over the head with his militia radio. He also smacked me over the right ear with his palm, all the while he was swearing and insulting me.'

Excerpt from Maksim Serhiyets' complaint concerning the events of 16 September: 'When we were taken to the Centralny militia station in Minsk, we were told to stand in the corridor, facing the wall. Only members of the riot squad were left there after officers of the Centralny militia station took down our IDs. Some of the riot squad from time to time went up to those arrested, asking them different questions and insulting them in different ways. They beat some of them. When some militia officers passed by me, they grabbed me by my ponytail and started taunting me, asking me what I needed it for and mockingly calling me Kostya Dzyu. Then I was led into a separate room, where four or five officers grabbed me from all sides by the arms and legs. They pushed my head up against the wall and cut my hair on the back of my head. Then they ordered me to put my hands on the back of my head and return to the corridor. In the corridor I took my ponytail that was now inside my collar and put it into my pocket. Some time later a riot militiaman came up to me and said: 'I see they've already cut it, let me trim it well'. Then he took some gadget out of his pocket and pressed it against my head. I took it to be an electric razor because of the sound it was making. Later Dzmitry Kudrytski, who saw the officer doing it, explained that it had really been a mobile phone that for some strange reason had a recording of an electric razor on it.'

Excerpt from Alexander Stsepanenka's complaint concerning the events of 16 September: 'when the riot squad from the main militia bureau of the Minsk city executive committee had already got me into their bus, plain-clothed militia officers started beating me with multiple

10

blows to my head, torso, legs and arms. One of the riot squad twisted my arm, while another one hit me in the eye with his fist. As a result of the medical examination at reception room #2 of Minsk clinical hospital I was diagnosed with ‘paraorbital haematoma on the right’. Militia officers also beat the others who were arrested together with me. In the bus I was pushed down to the floor and all that time I was being beaten by militia officers. I was kicked in the head and in the back. Neither I nor other detainees resisted arrest, either in the bus or in the building of the Centralny militia station in Minsk.’

The prosecutor’s office and the main bureau of the MIA internal policing department investigated these complaints, but ‘failed to find any violation of current legislation by militia officers’. In particular, the answer of V.A. Kistsern, head of the 3rd bureau of the Ministry of Internal Affairs to A. Stsepanenka’s complaint, reads: ‘Within the scope of the investigation, it is impossible to confirm or disprove your claims about the use of physical force by the riot squad and no evidence has been found to support your claims that the detainees were insulted, claims that are refuted by the militia officers concerned.’ Similar answers were received to all other complaints. The Centralny district prosecutor’s office of Minsk could find no evidence in support of the complaints and refused to instigate any criminal cases against the militia officers who had tortured the detainees. In Belarus it is normal practice to refuse to instigate criminal proceedings for the torture of participants of peaceful demonstrations. State bodies refuse to investigate such cases and do not hold those militia officers who abuse their powers to legal account.

The Human Rights Center *Viasna* and the International Federation for Human Rights (FIDH) issued a joint statement about these facts to Manfred Novak, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.. The complaints of the victims and testimonies of several witnesses were attached to it. Due to the absence of public control over the activities of law-enforcement agencies in Belarus, there is an inherent problem of torture within the system and in the overwhelming number of cases, the cruel treatment of detainees and those who have been arrested receives no publicity.

The situation of people held in psychiatric hospitals, preventative medical/labor clinics (PMLC) and tuberculosis hospitals is cause for concern as well. The Human Rights Center *Viasna* continued gathering information about conditions in PMLCs and their use of recovering alcoholics as forced labor. Human rights activists consider the practice

of incarcerating citizens in PMLCs using civil legal proceedings in the absence of any criminal charges as a violation of the right to personal immunity and the use of their labor there as forced labor.

Below are the results from questioning a number of people who were held in an PMLC. The conversation was recorded on 21 November 2009 in the town of Chavusy in the Mahiliou region. The participants were:

the human rights activists Barys Bukhel and Aliaksei Kolchyn;

Aksana Ivanova, who was held in the PMLC from 19 June 2008 till 9 June 2009;

Taisiya Kazubouskaya, was held in the PMLC from 19 June 2008 till 12 May 2009;

Viachaslau Belenkou, partner of Iryna Lozhkina who has been kept in the PMLC since 10 June 2009.

<u>Conditions in the PMLC</u>: are described as ‘terrible’ and ‘hard’. There are two two-storied buildings. The dormitories are damp. It is too hot and stuffy there in the summer, whereas in the winter it is very cold and people have to sleep fully dressed under their overcoats. The roof leaks, as a result of which buckets are placed on the top bunks (the top tier of three) and 2-3 people share one bunk. The radiators do not heat the rooms properly. The windows have chinks in them which the inmates have blocked up. In the infirmary, people sleep on mattresses on the floor. People are also kept in rooms that are unsuitable for human habitation. For instance, from 18 to 27 inmates were kept in the lobby under the drying room (a corridor having an area of about 18 square meters) in 2008. This room unlike all the others has slatted windows. About 60 people sleep in an area of about 80 square meters. Usually, there are three-tiered bunks. The aisles between them are less than 50 centimeters wide and two people are unable to pass one another. It is very crowded there when the people are woken up in the morning.

Whenever a commission pays a visit to the PMLC, many people are taken out to work or hidden in the drying chambers in order to hide their real number. There are about 1,200 in the PMLC at any one time. According to Lozhnikava, there were about 850 people there in November 2009.

The dormitories are regularly searched, including by the militia. On return from work, the people are lined up and counted (usually at 6 p.m.). Those who disobey orders are put in a small black hole in the basement. The black hole is heated, but is quite cold in summer.

The bedclothes are changed twice a month. Often they aren't clean and are stained. The number of toilets and washbasins is very small. There are only three toilets and five washbasins (only three of them work) on the second floor where about 300 people are kept. Often there is no water and the people have to go outside to bring it in. There is only cold water in the washbasins. The inmates are issued with soap.

The lighting is sufficient. The people aren't allowed to read, but, there is no leisure time anyway in the PMLC, even on days off. The lights go out at 10 p.m. There is a library, but all the books are on military subjects. The inmates are forced to subscribe to the local state newspaper *Pratsouny Shliakh* at their own expense. There is no radio. There is one TV set in the 'large room'. It was repaired at the inmates' expense as well. The internal yard of the PMLC is used for walks. The grounds are fenced off with barbed wire. There are no guard dogs. The PMLC has just one public telephone which is situated in the PMLC guard house and everything can be heard by the guards. According to Kazubouskaya and Ivanova, it is also bugged. Letters are often not delivered or are delivered very late — up to six months. All correspondence is censored. the envelopes of letters sent by inmates are not sealed by them, but nonetheless reach their destination sealed. Meetings with friends and relatives can last up to three hours and take place in the presence of a supervisor who listens in on the conversation. There are no restrictions on the sending of parcels. The shop van comes to the PMLC once a month and inmates can buy all their necessary supplies.

Nutrition: Depending on the time people are sent off to work, breakfast may be served very early at 4.30 am. There is no food for the rest of the day, till they return to the PMLC (between 5 and 7 pm.), So many people take the breakfast with them. Dinner is served on return from work. The food is awful: barley, oats and boiled fish. There are no fruit or vegetables. It is also prohibited to bring them back from work (they are confiscated at the guard house). It is prohibited to pass sugar to the inmates (though jam is permitted).

Labor: The people are woken up between 3 and 3.30 am. depending on the distance the inmates have to travel to work. All work is done in the presence of supervisors. No working clothes are issued, not even gloves. They hand out «overalls, reflective bands and headscarves» all at the expense of the inmates. The inmates have to pay for all clothes and footwear they are given. If they refuse to do so, they lose the chance of being released early.

The inmates work on building sites. Sometimes there are injuries. Helmets and safety belts are not issued. No safety instructions are given, even though everyone has to sign that they have received them. In winter, people are not allowed to warm themselves in the site hut. Whenever there is a problem between the administration and an inmate, the case is not reviewed and the inmate is simply transferred somewhere else. People cannot choose the work they do. Ms T. Kazubouskaya did not have a single day off in six months after she was sent to the PMLC. This is normal practice there. The working day can last for more than eight hours and overtime is not paid. There are no bonuses such as for working on a weekend. However, in order to keep the documentation in line with legal regulations, the administration does not record overtime. People are taken to work on buses and in open vehicles, including in winter. The transport is not heated. Sometimes women from the PMLC work together with male convicts, which has resulted in a number of unseemly incidents.

Medical aid: People are not provided with plasters, bandages or medications and have to buy them on their own. In the PMLC, there is no narcologist or gynecologist. There is a therapist, a dentist, three nurses and sometimes a psychologist. Medical aid is usually limited to issuing a tablet of Analgin. There's no treatment for alcoholism either: only one tablet of ascorbic acid and two tablets of valeriana extract are given during the first three days. All incomers are checked for lice and scabs, no other medical examination is conducted. A case was registered where a woman placed in the PMLC in a state of alcoholic intoxication lost her mind after spending some time there. Chest x-rays are done once a year. Sometimes, three-tier bunks prevent the people from receiving the necessary medical aid: a case was registered where a woman had an epileptic seizure and the medic could not reach up to the top bunk where she was lying.

Finances: One has to live in the PMLC on money received from food parcels, as the wages are extremely low (BYR 80,000 — 130,000 a month, BYR 2,900 is roughly equal to $1). Builders who work with the PMLC inmates receive much more (up to BYR 1.5 million a month). An inmate can use only 10% of his wages for shopping at the van-shop. The rest goes to the PMLC to cover the cost of accommodation and food and cover his or her debts (for instance, for the care of the inmate's children by the state). Due to the low wages, the debt incurred for the care of a inmate's children increases the longer an inmate stays in the

PMLC. Kazubouskaya and Ivanova accrued debts of 3 and 4 million rubles respectively. Ivanova had to pay BYR 320,000 monthly for the care of her children. As a result, she received only BYR 43,000 for October and Kazubouskaya received 21,000, though she earned more than BYR 100,000. Inmates are only given their money after debts have been deducted. And on release only the money that they have earned is given to the inmates. All debts must be paid, otherwise the inmate will not be released. Sometimes people are released from the PMLC without any money at all. Ivanova was released with BYR 15,000 and Kazubouskaya with BYR 5,000.

People are often sent to the PMLCs without sufficient grounds. This happened to Kazubouskaya. The militia have a quota and so they arrest the requisite number of people and draw up the appropriate charges (most often for disorderly conduct). Then the detainees are made to sign the them. Sometimes they are threatened and coerced. For instance, a bottle of water was poured over Kazubouskaya's breasts. After a quick trial (according to Kazubouskaya and Ivanova, the court verdicts are prepared in advance), a person is sent to a PMLC for one year. Usually this happens after 10 days, the legal period in which one may appeal against the verdict. Ivanova and Kazubouskaya both said that sometimes the court verdicts are deliberately handed to the convicts after the expiry of this term and that this is often done when people are sent to the PMLC straight after the court case. Thus, people are deprived of the opportunity to appeal. One case was recorded where a woman was sent to the PMLC without any documentation at all. She was kept there without a court verdict for about six months before her son found her and took her away.

The closed nature of the penitentiary system and the absence of public control prevent a proper examination of the conditions that prevail PMLCs. This is of grave concern for human rights groups. Even though the Ministry of Justice set up a system of public commissions to oversee penitentiary institutions, their function is only formal and they are ineffective. The results of their work is not published.

Appendix 1

THE MINISTRY OF JUSTICE OF THE REPUBLIC OF BELARUS

2 March 2009

to A.V. Bialiatski and others
involved in the establishment
of the Civil human rights
association «Nasha Viasna»

About the refusal to register
the civil association with the state

On 26 January 2009 the Ministry of Justice of the Republic of Belarus received materials submitted for the state registration of the Civil human rights association «Nasha Viasna» (further referred to as CHRA). During their study it was established that:

The list of members of the auditing commission of the CHRA testifies that the Chairperson of this body of the organization was not elected in accordance with paragraph 3.14 of the Charter of the CHRA and the appropriate column of this list as established in annex 3 of the resolution of the Ministry of Justice of 30 August 2005 #482 «On the approval of the normative legal acts on issues of drafting and consideration of documents concerning the state registration of political parties, trade unions and other civil associations, their unions (associations) and concerning state registration and exclusion from the state registration ledger and concerning the registration and deregistration of their sub-organizations» (further referred to as the Resolution).

The presented documents have a number of inconsistencies in their data including the name of the forum at which the CHRA was allegedly established (further referred to as the Assembly).

At the same time this Assembly must bear the title of a constituent congress, conference, general assembly or other constituent assembly, in accordance with points 6 and 10 of the Instruction on the approval of the normative legal acts on issues of drafting and consideration of documents concerning the state registration of political parties, trade un-

ions and other civil associations, their unions (associations) and concerning state registration and exclusion from the state registration ledger and concerning the registration and deregistration of their sub-organizations that was approved by the Ministry of Justice ruling of 30 August 2005 #48 with further amendments and supplements (further referred to as the Instruction).

In regards to the demands of annex 2 to the Ruling, the information concerning a number of persons is missing in the list of the founders of the HRCA, or inaccurate data are set forth.

As it is clear from the letter of the HRCA of 7 February 2009, the list of the founders is also the list of registration of those who participated in the Assembly. In this regard, it cannot be explained how the founders of the CHRA did not notice the incorrect or incomplete data about themselves while putting their signatures opposite when they registered themselves at the beginning of the Assembly, if indeed they were really present.

Moreover, the list of founders doesn't correspond to the requirements of point 5 of the Instruction.

In the letter of the HRCA of 7 February 2009 it is stated that the Assembly was conducted at office #38 in Kharuzhai Street, 22 in Minsk. As can be seen from the minutes of the Assembly, 67 people were allegedly present at it.

From the materials provided regarding the owner's registration of the office it can be seen that the total area of the office is 35 square meters. This means that there was just 35/67 = 0.5 square meters of the total area per one participant of the Assembly.

If we take into account the layout of the office and the existence of a number of furnished working areas with the appropriate furniture and computer equipment, the available space for each participant of the Assembly would be considerably less than the general estimate indicated above. That is why it is incomprehensible how 67 people could have been placed there and provided with the opportunity to independently state their opinions in accordance with Article 4 of the Law of the Republic of Belarus «On civil associations» (further referred to as the Law). And how could they have accommodated the presidium of the Assembly and organized the Assembly's work over the course of one hour with a vote count and the minute-taking?

Moreover, the Ministry of Justice has analyzed the written answers received from the those indicated in the list of founders to various inquiries. As a result of this analysis, it has been established that:

- T.V.Bulanava, U.U. Malei and A.A. Masliukova failed to give the exact number of people who were present at the Assembly;
- Pivanos A.A. failed to give the correct number of participants of the Assembly, the place where the event took place or the time of the beginning of the Assembly and Karatysh I.M. was also unable to give the correct date of the Assembly.

The signature of V.R. Ruhainy in the letter confirming his presence at the inquiry of the Ministry of Justice of 6 February #06-18/84, considerably differs from his signature in the list of founders. The aforementioned facts demonstrate that the Assembly was not conducted at all, or that those people who were present there do not correspond to the list of founders that was presented to the Ministry of Justice. As can be demonstrated from the submitted minutes of the Assembly, the chairperson and the secretary of this forum were not elected, which is an unacceptable violation of point 10 of the Instruction and represents grounds for denial of state registration to the CHRA.

It also follows from what has been stated above that the documents that were submitted to the Ministry of Justice with the titles 'list of founders', 'list of members of the auditing commission', 'list of members of the Council' and 'minutes' of the Assembly contain imprecise, inaccurate or inappropriate information and therefore cannot be considered as legal documents. Thus, it must be considered that the list of founders of the civil association, the list of the elected bodies of the civil association, the minutes of the constituent congress, conference, general assembly or other constituent assembly (documents that are obligatory in accordance with Article 13 of the Law) were not submitted to the Ministry of Justice.

Regarding the requirements of point 11 of the Instruction, the invoice confirming payment of the state fee that was received by the Ministry of Justice did not contain the obligatory information about the name of the civil association for the state registration of which the fee was paid. For this reason this document cannot be considered as legally binding and must be considered as not having been submitted.

The failure to present the necessary documents is grounds for denying state registration to a civil association.

It has been established, that 35 founders of the CHRA are to take administrative responsibility. In particular, V.U. Vauraniuk, U.A. Viali-

chkin, U.M. Labkovich, V.A. Misnikau, L.S. Mukhina have been punished in civil courts twice; T.V. Bulanava, A.V. Siudak, U.I. Shytsikau 3 times; I.S. Bohdan 4 times; A.L. Valiuk, V.P. Sazonau, V. Ya Sozinau 5 times; S.A. Kavalenka and D.S. Salauyou 11 times. Moreover, two of the founders of the CHRA (V.A. Misnikau and I.M. Karatysh) have criminal convictions. Meanwhile, Misnikau V.A. was convicted twice and in 2003 received, as an additional criminal punishment, a ban on teaching for 3 years.

Thus 53.7% of the founders of the CHRA do not respect the law. Therefore, it should be taken into consideration that a number of them have committed such offenses as:

— violation of the terms of registration (re-registration) of firearms or the rules for their registration;
— distribution of the printed publications that violated the law, had no technical and circulation data and contained materials intended to inflict harm on the state and public order and on the rights and legal interests of citizens.
— violation of the law on organizing or holding an assembly, rally, street procession, demonstration or other mass events or pickets.
— violation of the law on using flags and streamers that have not been registered in accordance with the law and the usage of the flags, streamers and posters, the content of which is aimed at inflicting harm on the state and public order and on the rights and legal interests of citizens, at religious, sportive, mass-cultural and other entertainment events and the use of the aforementioned items at assemblies, rallies, street processions and demonstrations;
— violation of the law on elections, referendums and the revoking of deputies.

It has also been established that another founder of the CHRA faced criminal charges under Article 130 of the Criminal Code (incitement of racial, national or religious hostility or discord) .

Moreover, the minutes of the Assembly state, «Valiantsin Stefanovich … listed the chief objectives of the civil association…». These objectives of the CHRA were not debated by the participants of the Assembly. On the contrary, after the speech by V.K Stefanovich., it was immediately decided to establish a civil human rights association with the objectives voiced by V.K. Stefanovich.

The aforementioned is evidence that the Charter of the CHRA presented to the Ministry of Justice that contains only one objective does not reflect all objectives of the CHRA that were adopted at the Assembly. This contravenes one of the principles of the establishment of civil associations, provided under Article 4 of the Law, namely the principle of publicity.

Taking into account the above-stated facts in accordance with Article 15, part 3, paragraphs 2 and 4 of the Law and point 30, paragraphs 2 and 4 of the Instruction, on 26 February 2009 the Ministry of Justice has decided to deny state registration to the CHRA.

An appeal can be lodged against this decision with the Supreme Court of the Republic of Belarus within the period of one month.

You are asked to personally inform the founders of the CHRA, T.V. Bulanava, I.M. Karatysh, U.U. Malei, A.A. Masliukova and A.A. Pivanos of the contents of this letter, as on February 2009 these persons had submitted written inquiries concerning the state registration of the CHRA.

Chairperson of the Bureau
of civil associations A.Slizheuski

06 Kharyton 200 70 97

Appendix 2

DECISION
IN THE NAME OF THE REPUBLIC OF BELARUS

On 22 April 2009, the Supreme Court of the Republic of Belarus, composed of I.H. Milto, the head; and T.U. Ivanova, the secretary; with the participation of U.U. Liaudanski, a prosecutor of the General prosecutor's office of the Republic of Belarus, the plaintiffs V.K. Stefanovich, U.M. Labkovich and A.V. Bialiatski and the representative of the Ministry of Justice, A.P. Kharyton, having considered in the court of the Republic of Belarus the civil case on the suit of Valiantsin Kanstantsinavich Stefanovich, Uladzimir Mikalayevich Labkovich and Alexander Viktaravich Bialiatski against the ruling of the Ministry of Justice of the Republic of Belarus concerning the denial of state registration to the Civil human rights association «Nasha Viasna», established that:

V.K. Stefanovich U.M. Labkovich and A.V. Bialiatski appealed to the court with a complaint in which they stated that on 26 January the documents for the state registration of the Civil human rights association «Nasha Viasna» had been passed to the Ministry of Justice of the Republic of Belarus (further referred to as the Ministry of Justice).

On 2 March 2009, the founders received a letter from the Ministry of Justice, in which they were informed that state registration of the civil association had been denied.

They consider the decision to be groundless and that it does not meet the requirements of the Law of the Republic of Belarus «On civil associations». They ask that this decision to be reversed and demand that the Ministry of Justice grant state registration to the Civil human rights association «Nasha Viasna».

At the court hearings, the plaintiffs V.K. Stefanovich , U.M. Labkovich and A.V. Bialiatski supported their claim.

The representative of the Ministry of Justice, A.P. Kharyton, did not agree with the claim.

Having listened to the explanations of the plaintiffs and the representative of the Ministry of Justice, the witnesses U.U. Malei and V.H. Ruhainy and having studied the written evidence and listened to the opinion of the prosecutor U.U. Liaudanski who considers that the complaint is not to be granted, the court has reached the following conclusions.

According to Article 15 of the Law of the Republic of Belarus «On civil associations», a decision to deny state registration to a civil association is taken in cases of non-compliance with the law regarding public associations when such non-compliance is of a serious nature; when the statutory documents (the aims, objectives, activities and the territorial range of the civil association's activities) do not comply with the legislatory requirements; when the civil association fails to present all documents required by the legal acts for state registration; when the civil association's name, including its abbreviated name, its symbols and the civil association's membership conditions do not comply with the requirements of the law and/or its statutory documents; when there is a failure to implement within a period of one month any demands stated in a decision to postpone state registration of a civil association and/or when there is a refusal to follow the legal demands of the appropriate registering body concerning a change in the name of a civil association.

It was ascertained that on 26 January 2009 the documents for the state registration of the national civil human rights association «Nasha Viasna» were filed with the Ministry of Justice.

On 2 March the Ministry of Justice directed a letter to the founders, in which the reasons for the denial of state registration to the civil association were stated.

The reason the Civil human rights association «Nasha Viasna» was denied registration was that the protocol of the constituent general assembly of the civil association contained no witnesses [sic *the document appears to have been translated into Belarusian from Russian and the word 'witnesses' is used by mistake instead of 'data' — translator's note*] concerning the election of the chairperson and the secretary of the general assembly. The witnesses [sic.] concerning the election of the chairperson of the Revision Commission were also absent. A part of the mandatory information concerning the number of people was either missing in the list of the association's founders or was incorrect. The invoice concerning the introduction in the national budget of the state fee did not contain the obligatory information concerning the name of the civil association for the state registration for which the fee was paid.

The existence of the aforementioned shortcomings is confirmed by the protocol of the constituent general assembly of the Civil human

rights association «Nasha Viasna», the lists of founders of the association and members of the Revision commission and the receipt of payment of the state fee. The applicants have admitted to some of these shortcomings.

Hence, the Ministry of Justice had grounds to deny registration to the Civil human rights association «Nasha Viasna», thus appeal against the decision is not to be granted.

The arguments of the applicants that the mistakes listed could be corrected during the process of registration are groundless. The Ministry of Justice has the right to provide an opportunity to correct shortcomings but there is no obligation to do so.

The Ministry of Justice presented no evidence that the constituent assembly had not been conducted at all or that the persons present did not correspond to the list of the founders that was presented. Thus the answer [[sic.] *the word 'answer' is also used by mistake, instead of 'denial' –translator's note*] of state registration to the Civil human rights association «Nasha Viasna» on this ground groundless.

The court's opinion is that other shortcomings, enumerated in the letter of the Ministry of Justice for the denial of state registration to the Civil human rights association «Nasha Viasna», do not constitute reasons to deny state registration to the civil association. Taking into account the aforementioned and being guided by Article 302 of the Civil Process Code of the Republic of Belarus, the court

DECIDED:

To deny Valiantsin Kanstantsinavich Stefanovich, Uladzdimir Mikalayevich Labkovich and Alexander Viktaravich Bialiatski in granting their appeal against the decision of the Ministry of Justice of the Republic of Belarus to deny state registration to the Civil human rights association «Nasha Viasna».

This verdict enters into the legal force immediately upon its announcement and cannot be appealed against in courts of appeal.

Judge I.H. Milto

The copy is valid:
Judge I.H. Milto

Appendix 3

THE MINISTRY OF JUSTICE OF THE REPUBLIC OF BELARUS

12 May 2009

to A.V. Bialiatski and others
involved in the establishment
of the Civil human rights
association «Nasha Viasna»

About the refusal to register
the civil association with the state

On 25 April 2009, the Ministry of Justice of the Republic of Belarus received materials concerning the state registration of the Civil human rights association «Nasha Viasna» (further referred to as CHRA). During their study it was established that:

Contrary to the demands of annex 2 to the ruling of the Ministry of Justice of 30 August 2005 #48 «On the approval of the normative legal acts on issues of drafting and consideration of documents concerning the state registration of political parties, trade unions and other civil associations, their unions (associations) and concerning state registration and exclusion from the state registration ledger and concerning the registration and deregistration of their sub-organizations», false information or distorted information concerning the number of persons was found in the list of the founders of the HRCA. Taking into account the aforementioned discrepancies, the document submitted under the title «List of founders of the Civil human rights association «Nasha Viasna» cannot be considered to be a legally valid document. Hence, it must be considered that the list of founders of the civil association, an obligatory document in accordance with Article 13 of the Law of the Republic of Belarus «On civil associations» (further referred to as the Law), was not presented to the Ministry of Justice. In accordance with Article 15, part 3, paragraph 4 of the Law, this constitutes grounds for denying state registration to the CHRA.

These errors occur despite the fact that the organization's founders have been already informed of similar errors in the letter about the denial of state registration of 2 May 2009, #06-12/145.

The second part of the name of the CHRA («Nasha Viasna») does not correspond to the organization's Charter.

According to Article 15, part 3, paragraph 5 of the Law, the failure of the organization's name to comply with its charter is sufficient grounds to deny state registration to the CHRA.

In accordance with Article 14, part 2 of the Law, the appropriate registering body has the right to check the validity of the documents that are presented for the state registration of a civil association or a union of civil associations. It obliges representatives of the civil association or the union of civil associations that is being established not to create obstacles to the registering body in conducting its investigations.

However, despite the official inquiries of the Ministry of Justice, the administration of the civil association has failed to present to the registering body the program adopted at the constituent assembly of the CHRA, as well as other information. Moreover, a representative of the CHRA also refused to allow the Ministry of Justice to check the validity of the document that confirms the legal address of the organization.

The letter of guarantee for the provision of premises that has been submitted to the Ministry of Justice cannot be considered to be a document that confirms the CHRA has a legal address. For this reason it must be considered that a mandatory document specified by Article 1.3 of the Law that could confirm that the civil association has a legal address was not presented to the registering body. According to Article 15, part 3, paragraph 4 of the Law, this circumstance constitutes grounds for denying state registration to the CHRA. The creation of these aforementioned obstacles hindering the registering body in the performance of the duties accorded to it by the Law demonstrates the disregard with which the administration of the CHRA and other representatives of the organization hold the norms of the legislation.

According to the information possessed by the Ministry of Justice, many of the CHRA founders have faced civil charges, many of them repeatedly, including for offenses disturbing public order and violating the rights and freedoms of other people.

The attention of the CHRA was drawn to these circumstances in the letter concerning the denial of state registration to this organization (the letter of 2 March #06-12/145). Nevertheless, almost all the surnames

of the offenders are still present in the list of the CHRA founders that was submitted to the Ministry of Justice on 25 April 2009. There are also certain founders of the CHRA who face criminal prosecution.. Taking into account these aforementioned facts and being guided by Article 15, part 3, paragraphs 4 and 5 of the Law, the Ministry of Justice decided on 25 May 2009 to deny state registration to the CHRA.

An appeal can be lodged against this decision with the Supreme Court of the Republic of Belarus within the period of one month.

Deputy Minister A.M. Bodak

06 Kharyton 200 70 97

Appendix 4

DECISION
IN THE NAME OF THE REPUBLIC OF BELARUS

On 12 August 2009, the Supreme Court of the Republic of Belarus, composed of Judge A.R. Tserakh, secretary V.S. Karalkova, with the participation of R.I Kostrykava, a prosecutor of the General prosecutor's office of the Republic of Belarus, having considered in the court of the Republic of Belarus the civil case on the suit of Valiantsin Kanstantsinavich Stefanovich, Uladzimir Mikalayevich Labkovich and Alexander Viktaravich Bialiatski against the ruling of the Ministry of Justice of the Republic of Belarus concerning the denial of state registration to the Civil human rights association «Nasha Viasna»,

ESTABLISHED THAT:

A.V. Bialiatski,U.M. Labkovich and V.K. Stefanovich appealed to the court with a complaint in which they stated that on 25 April 2005 the requisite documents for state registration of the Civil human rights association «Nasha Viasna» had been passed to the Ministry of Justice of the Republic of Belarus (further referred to as the Ministry of Justice).

On 27 May 2009, the founders received a letter from the Ministry of Justice, in which they were informed that state registration of the civil association had been denied

They consider the decision to be groundless and that it does not meet the requirements of the Law of the Republic of Belarus «On civil associations». They ask that this decision to be reversed and demand that the Ministry of Justice grant state registration to the Civil human rights association «Nasha Viasna».

At the court hearings, the plaintiffs V.K. Stefanovich , U.M. Labkovich and A.V. Bialiatski supported their claim.

The representative of the Ministry of Justice, A.P. Kharyton, did not agree with the claim.

Having listened to the explanations of the plaintiffs and the representative of the Ministry of Justice and listened to the opinion of the

prosecutor R.I. Kostrykava who considers that the complaint is not to be granted, the court has reached the following conclusions.

In accordance with Article 15 of the Law of the Republic of Belarus «On civil associations», a decision to deny state registration to a civil association may be taken in cases where:

there is a violation of the established procedures of creating a public association and where such a violation is deemed incorrigible, such as a discrepancy in the statutory documents (the aims, objectives, activities and the territorial range of the civil association's activities) with the requirements of the legislation;

the failure of the civil association to submit all the documents specified by the relevant legal acts and required for the state registration;

the non compliance of the name of the civil association, including its abbreviated name, its symbols and the civil association's membership conditions with the requirements of the law and/or its statutory documents;

The failure to implement within a period of one month demands stated in a decision to postpone state registration of a civil association and/or the refusal to follow the legal demands of the appropriate registering body concerning a change in the name of a civil association.

During court hearings, it was ascertained that on 25 April 2009 the documents for the state registration of the republican Civil human rights association «Nasha Viasna» were filed with the Ministry of Justice.

On 25 May 2009, the Ministry of Justice directed a letter to the founders, in which the reasons for the denial of state registration to the civil association were stated.

The reason for the refusal to register the Civil human rights association «Nasha Viasna» with the state was that false information or distorted information was found in the list of founders of the association. Moreover, the registering body was denied the opportunity to check the validity of the information concerning the legal address of the organization. The letter of guarantee for the provision of premises that was submitted to the Ministry of Justice cannot be considered to be a document, requisite for registration, confirming that the CHRA has a legal address.

The aforementioned circumstances, listed in the letter of the Ministry of Justice, are confirmed by the list of founders of the Civil human rights association «Nasha Viasna», the documents studied by the court detailing the personal information of the CHRA founders and the case materials concerning the checks performed to confirm the validity of the

letter of guarantee for the provision of premises for a legal address for the civil association.

The applicants have admitted to some of these shortcomings during court proceedings. Taking into account the aforementioned information, it should be noted that the Ministry of Justice had grounds to deny registration to the Civil human rights association «Nasha Viasna». Thus the appeal against the decision of A.V. Bialiatski, V.K. Stefanovich and U.M. Labkovich is not to be upheld.

The arguments of the applicants that the mistakes listed could be corrected during the process of registration are groundless. The Ministry of Justice has the right to provide an opportunity to correct shortcomings but there is no obligation to do so. The court's opinion is that other shortcomings, enumerated in the letter of the Ministry of Justice for the denial of state registration to the Civil human rights association «Nasha Viasna», do not constitute reasons to deny state registration to the civil association. Taking into account the aforementioned and being guided by Article 302-306 of the Civil Process Code of the Republic of Belarus, the court

DECIDED:

To deny Alexander Viktaravich Bialiatski, Valiantsin Kanstantsinavich Stefanovich and Uladzdimir Mikalayevich Labkovich in granting their appeal against the decision of the Ministry of Justice of the Republic of Belarus to deny state registration to the Civil human rights association «Nasha Viasna».

This verdict enters into legal force immediately upon its announcement and cannot be appealed against in courts of appeal.

Judge A.R. Tserakh

The copy is valid:
Judge A.R. Tserakh

Appendix 5

Public Human Rights Association 'Nasha Viasna' v. Ministry of Justice of Belarus

Judicial Observation Report

I — Introduction

Kirill Koroteev, chargй de mission of the International Federation for Human Rights (FIDH), was mandated by the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and the World Organisation against Torture (OMCT), to conduct a trial observation mission in the case of Public Human Rights Association «Nasha Viasna» vs. Ministry of Justice before the Supreme Court of Belarus. It is worth noting at the outset that Ms. Souhayr Belhassen, President of the FIDH, was refused a visa to observe the trial.

The trial commenced on 10 August 2009 and the judgment was given on 12 August 2009. The judgment is final and is not amenable to an ordinary appeal. The task of the chargй de mission was to assess not only the fairness of the trial, but also the reasons given by the authorities to refuse registration of the NGO as this analysis forms part of the test of proportionality of interference with the rights of peaceful assembly and association, as guaranteed, e.g., by Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

II — Brief historical background

The trial concerned the appeal of the refusal to register one of the leading human rights groups in Belarus. It used to be named Human Rights Centre «Viasna» («Spring») before its dissolution by a court order in 2003. Having examined the case of Belyatsky et al. vs. Belarus, the UN Human Rights Committee concluded that the 2003 dissolution violated Article 22 of the ICCPR. The group continued to work without legal recognition, even though it is a crime under article 193-1 of the Criminal Code of Belarus to participate in an unregistered organ-

isation. It reapplied for registration twice in 2007 and 2009 under the name of «Nasha Viasna» («Our Spring»; it is illegal to use the name of a disbanded organisation). Both applications were refused by the Ministry of Justice and the Supreme Court dismissed the complaints against the decisions of the Ministry.

Under Belorussian law, every non-profit organisation must be registered with the Ministry of Justice and obtain legal personality. It is only under this condition that it may legally operate, receive and spend funds (even though receiving funds is practically impossible for a human rights NGO in Belarus because of the existing financial regulations), formally employ staff, etc.

The present case concerned the third application of the group to be registered by the Ministry of Justice. More than 70 of its members applied to the Ministry on 29 March 2009 and on 25 May 2009 the application was dismissed. The Ministry provided four reasons for its refusal:

Firstly, it argued that four members of the group provided incorrect or false information — on their addresses and places of work.

Secondly, it did not accept the letter of guarantee for the NGO's future premises as —

1. Communication no. 1296/2004, 27 July 2007. The UN HRC used the Russian version of the applicant's surname and the one used here is Belarusian. In this report Mr. Belyatsky and Mr. Byalyatskiy are the same person.

2. See Annual Report 2009 of the Observatory as well as Urgent Appeals BLR 001/ 0309/OBS 038 , 038 .1 and 038.2.4 legally valid and argued that it was not possible for the authorities to visit the premises themselves.

Thirdly, it blamed the founders of the group for not having sent the Program of Action — reportedly adopted by them to the Ministry despite the Ministry's requests to do so. Fourthly, it noted that the NGO's name « ? Nasha Viasna» was contrary to its Statute. It further noted that the NGO's founders had engaged in illegal activities in their past and had been brought to justice for «administrative offences».

Three of the founders of «Nasha Viasna», Mr. Ales Bialiatski (Chairman), Mr. Uladzimer Labkovich and Mr. Valyantsin Stefanovich, challenged the refusal in the Supreme Court of Belarus. They argued that:

What the Ministry called misleading information on the identities of the founding — members was merely a number of clerical errors,

The letter of guarantee was valid and had raised no objections on behalf of the Ministry — in previous proceedings,

No Program of Action had been adopted at the founders' meeting ?

Other objections raised by the Ministry had had no basis in law. ?

III — The trial

On 10 August 2009 public hearings commenced before Mr. Anatol Tserakh, judge of the Supreme Court, sitting as single judge. All three applicants were present throughout the proceedings. They were not represented, but two of them are lawyers (Mr. Labkovich and Mr. Stefanovich). The Ministry of Justice was represented by one of its lawyers, Mr. Aliaksandar Kharyton. A prosecutor of the Office of the Prosecutor-General of the rank of lieutenant-colonel participated in the proceedings ex officio. Only the prosecutor was allowed to sit at a table in the courtroom, the parties were sitting on the front row of the benches reserved for the public. Up to 30 members of the public were present, including some of «Nasha Viasna» members, representatives of foreign embassies and journalists. The first day of the hearing was divided between the opening statements of the parties, questioning the witness, studying the contents of the case-file and pleadings on the merits of the case. On the second day the prosecutor presented her conclusions and the parties replied to each other's pleadings.

At the outset of the proceedings Mr. Labkovich asked the judge to order the representative of the Ministry of Justice to limit the latter's submissions to the grounds of the refusal of registration set out in the Civic Associations Act and not to invoke any irrelevant considerations like the allegedly illegal activities of the NGO's founders. The judge appeared to accept that the respondent's submissions should be limited to the applicants' grounds of appeal, but did not prevent Mr. Kharyton from making extensive references to the applicants' personal backgrounds.

1. The applicants' arguments:

Minor details abusively considered as «misleading information»

During his opening statement, Mr. Stefanovich noted that what was called «misleading information on the founders» was that one of them indicated his place of work as «secondary school no. 1» rather than «institution of secondary education — secondary school no. 1» and another indicated that he was «director of a group» rather than «direc-

tor of a section» in an educational institution. As regards the Program of Action requested by the Ministry, Mr. Stefanovich maintained that neither had such a document been adopted, nor was its adoption required under the law. As regards the applicants' allegedly illegal activities (which consisted of minor road traffc offences), he argued that this was not grounds to refuse registration under the Civic Associations Act.

Conformity of the NGO name with the law

Mr. Labkovich further argued that the NGO's name was in conformity with the law, as it made reference to the non-profit nature of the organisation and its field of activities (human rights). He also argued that the Ministry's criticism of «Nasha Viasna» was completely unfounded.

The letter of guarantee

As regards the letter of guarantee, it was stressed that the Ministry had had no objections to the same letter in two previous sets of proceedings and that the owner of the premises had only received a phone call from the local authorities while he had been away and could not come and open the premises in time for the inspection. It was further added that together with the letter of guarantee the technical description of the premises drawn up by the State Bureau for Technical Regulation had been submitted to the Ministry, meaning that no further inspection was needed. When asked by the judge and by the representative of the Ministry of Justice as to how the Ministry could check the veracity of the letter of guarantee, Mr. Labkovich replied that the prosecutor's office was authorised by the law to intervene in private premises in certain cases and that the Ministry should have conducted the inspection via the prosecutor's office rather than via the local authorities.

2. The Ministry's arguments:

The representative of the Ministry of Justice, Mr. Kharyton, reiterated that one of the founders indicated that he had been working for the JSC «Travers» rather than for the LLC «Travers» and referred also to the two above-mentioned mistakes. It further objected to the name of the organisation. According to Mr. Kharyton, because of the fact that the word «Viasna» («Spring») was written with a capital letter, it did not refer to the season but to another specific concept known only to the NGO's founders. He further stated that it was unclear from the documents available to the Ministry whether the NGO's to-be-premises had an entrance, so there had existed a need for the inspection which could not be conducted because of the owner's failure to cooperate. Also he had

asked for the Program of Action to be provided because it had been adopted by the founders according to the reports on their web-site www.spring96.org.

When asked by Mr. Labkovich whether he was aware of the UN Human Rights Committee's conclusions in Belyatsky et al. vs. Belarus, Mr. Kharyton replied that this communication concerned the events of 2003 and did not relate to the case at hand. Mr. Labkovich insisted that Mr. Kharyton name the legal provision on the basis of which the Ministry had decided that the letter of guarantee was invalid, but Mr. Kharyton declined to answer. When asked which provisions of the NGO Statute were violated by the name «Nasha Viasna», he replied 'all' for the reason that the Statute contained no explanation of what «Nasha Viasna» was. When Mr. Stefanovich asked him why the Ministry had not granted an extension of the time-limit so that the applicants would be able to correct the mistakes made, Mr. Kharyton replied that it was a right not an obligation of the Ministry.

Mr. Kharyton concluded by saying that the founders of the NGO had violated not only the laws of Belarus, but also the laws of foreign states having been expelled from Moldova during the parliamentary elections in July 2009, but failed to refer to specific decisions of the Moldovan authorities when asked to do so.

3. The witness' arguments:

The owner of the premises guaranteed to «Nasha Viasna» if it obtained registration was called to testify as a witness. He confirmed that he owned the premises and that he only received a phone call informing him of the required inspection one hour in advance from a person unknown to him and that he asked that the reasons be provided to him in writing. On the letter of guarantee itself, when asked by Mr. Kharyton whether he was aware that two regulations on keeping the books of legal persons required any letter to bear the person's legal address and contact details, the witness replied in the negative. Mr. Kharyton later admitted that he had deliberately refused to mention these two instructions to the parties of the proceedings (Mr. Labkovich denounced this as a violation of the principle of equality of arms) and when the applicants noted the instructions' inapplicability to the present case because the owner of the premises was a natural rather than legal person, the representative of the Ministry of Justice replied that the instructions applied to natural persons 'by analogy'.

4. Back to the applicants' arguments

During the pleadings Mr. Stefanovich denounced the discriminatory approach of the Ministry of Justice, which consisted of repeated refusals to register human rights NGOs. He noted that all the documents required by law had been submitted to the Ministry and that no Program of Action, which was requested by the Ministry, had ever been adopted. Mr. Labkovich noted that the Ministry of Justice divided the grounds for its refusal as having been legal and non-legal. He admitted that three of more than 70 founders had made minor mistakes in their place of work, but that had no bearing on the founders' rights to create an NGO. He denounced the Ministry's objections against the NGO's name as having been more Kafkian rather than legal and the Ministry's approach which only consisted in creating as many obstacles for the NGO as possible. Replying to Mr. Kharyton's remarks on the applicants' personality and their «illegal activities» Mr. Labkovich recalled that a number of States like the USA, the EU and Ukraine had excluded representatives of the Ministry of Justice from their respective territories.

According to Mr. Byalyatski, the Ministry did not want a civilised dialogue between the authorities and the civil society. He claimed that no national human rights NGO had been registered in the last 10 years and that, for example, Armenia had 10 times more non-profit organisations per capita than Belarus. He alleged violations of the Constitution of Belarus and the ICCPR in the case at hand, having referred to the UN HRC's conclusion in the «Viasna» dissolution case. The UN HRC awarded the applicants a remedy of re-registration of their NGO, but nothing had been done by the authorities to make good the violation of the ICCPR. After international attention had been drawn to the NGO's situation by the European Parliament, the PACE and within the framework of the EU-Belarus human rights dialogue, the case ceased to concern only the applicants' personal situation, but rather related to the implementation by Belarus of its international commitments.

5. The replies of the Ministry

Mr. Kharyton replied that the conclusions of the UN «Commission on Human Rights» were only recommendations, that the applicants had no one to blame for their mistakes but themselves and that it was not the Ministry's task to correct those mistakes, which had been acknowledged, according to him, by the applicants.

Exercising their right to reply, the applicants denounced the excessively formalist approach of the Ministry of Justice to their application for registration and the lack of impartiality on the Ministry's behalf.

During the replies the representative of the Ministry of Justice accused Mr. Bialiatski of receiving great amounts of money from international sponsors to travel abroad and thanked God for living in 'blue-eyed' Belarus, further claiming that he had nothing to do in Ukraine, the EU or the US.

IV — The judgment

The prosecutor was the last to intervene during the pleadings at the beginning of the second day of the hearings. She limited her remarks to support of the Ministry's refusal on the grounds of incorrect information about the NGO's founders and of the impossibility of visiting the to-be-premises of «Nasha Viasna». The prosecutor opined that these drawbacks were enough to refuse the registration of the organisation and to dismiss the appeals. The prosecutor did not address the parties' arguments given in the proceedings and the applicants' references to the Constitution and the ICCPR, which was denounced by the applicants during their replies.

When the Court gave its judgment, it followed the prosecutor's conclusions. The judge dismissed the Ministry's reliance on the 'illegal activities' of the applicants, its objections to the name of the organisation and the failure to present a Program of Action. However, it upheld the Ministry's decision on the grounds of incorrect information about the founders and of their having impeded the Ministry's inspection of the premises mentioned in the letter of guarantee. The judge did not address the applicants' arguments under the Constitution and the ICCPR.

No ordinary appeal may be made against the judgment. It may only be called into question by the President of the Supreme Court of Belarus or his deputies during a supervisory review.

V — Analysis

Several aspects of the trial call for comment.

Firstly, it must be noted that the parties had ample opportunity to present their arguments. The judge allowed the parties to put questions to each other without any restrictions, to present evidence and to reply

to each other's and the prosecutor's pleadings. From this point of view, the parties enjoyed equality of arms and the judge cannot be said to have been shown bias.

Secondly, however, the applicants' opponents were not limited to the representative of the Ministry of Justice whose decision they challenged before the Supreme Court. The prosecutor was their opponent as well, as she concluded in the Ministry's favour without discussing the parties' arguments at all. The prosecutor participated in the proceedings ex officio, the Code of Civil Procedure of Belarus thus allowed two state agencies, both of which defend the executive, to take part in the proceedings. Also, despite his subjective impartiality, the judge was the applicants' opponent. As it has been shown elsewhere, the Code on Judiciary and Status of Judges of Belarus expressly provided that the recruitment of judges, their career, legal training, disciplinary liability and dismissal, depend on the Ministry of Justice (respondent in the present case). Thus, it cannot be said that the judge and the Court were objectively independent and impartial.

Thirdly, as regards the merits of the judgment, it must be noted that even if the irregularities in the documents submitted by «Nasha Viasna» for official registration were of the kind to permit the refusal under the Civic Associations Act of Belarus, this is not enough to justify the authorities' interference with the applicants' right to association. Indeed, both under the Constitution of Belarus and the ICCPR the interference must pursue a legitimate aim. It has not been shown in the proceedings and in the judgment that the refusal to register «Nasha Viasna» pursued any of the aims set out in the Constitution of Belarus (article 23) or in the ICCPR (article 22(2)). Further, under the latter provision of the ICCPR, the interference must be necessary in a democratic society, that is, inter alia, proportionate to the legitimate aim pursued. Particularly convincing reasons must be given to justify the interference, bearing in mind that in Belarus it is a crime to participate in an unregistered association. In the present case, the reasons advanced by the prosecutor in her conclusions and by the judge in the judgment could hardly be treated as convincing and compelling. Indeed, when a founder indicates that her employer is «secondary school no. 1» rather than «institution of secondary education — secondary school no. 1» this does not mean any criminal intent, just as the request made by the owner of the NGO's to-be-premises to provide written reasons for the inspection, rather than an unconditional order, from an unauthorised person on the telephone

does not imply the founders' moral turpitude. Never has it been established that the founders of «Nasha Viasna» have called for violence or engaged in criminal activity. Rather, the authorities' decision makes them criminals. But no analysis of proportionality was provided in the judgment.

Fourthly, it must be born in mind that the UN Human Rights Committee (UN HRC) had already found a violation of Article 22 of the ICCPR in Belyatsky et al. vs. Belarus on account of the dissolution of the original «Viasna» in 2003. It ordered the authorities to provide the applicants with compensation and remedies including the new registration of the NGO. However, the Belarusian authorities opted to treat the UN HRC's conclusions as being merely recommendations and failed to implement its Views. But the ICCPR guarantees minimum inalienable rights, so whatever way the UN HRC's Views are treated, there is no other way to comply with the ICCPR than to give effect to its Views. The ICCPR has been wholly disregarded, though.

Finally, it must be noted that the applicants mainly relied on the illegality of the Ministry's actions, their being contrary to the Civic Associations Act and only in a subsidiary manner on the violation of their rights guaranteed by the Constitution and the ICCPR. But even if they had based their entire case on the Constitution and the ICCPR, the result would have been the same: the Supreme Court judge was only empowered to decide whether the Ministry had grounds to refuse the registration rather than to assess the human rights implications of the refusal.

3. See, e.g., the FIDH report «Conditions of Detention in the Republic of Belarus», June 2008, pp. 12-14.

VI — Comments

The Chairman of «Nasha Viasna» and one of the applicants, Ales Bialiatski, said that political reasons stood behind the judgment of the Supreme Court, which had little in common with justice and the rule of law. The claims of liberalisation of the regime were not supported by the required actions and Belarus remained a country dangerous to human rights activists, Mr. Bialiatski added.

For the reasons set out above, the chargй de mission denounced the trial as having been a shame for the Belarusian justice, but pointed out that Belarus has already got accustomed to such kind of shame.

Recommendations

1 — To the Belarusian authorities

- Guarantee in all circumstances an enabling environment for human rights defenders and put an end to any hindrance against their activities and to any kind of harassment against them, in conformity with the Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998;
- Conform in all circumstances with international standards on freedom of association provided in the ICCPR and in the 1998 UN Declaration on Human Rights Defenders;
- Conform with the reasoning and recommendations made in the Communication Belyatsky et al. vs. Belarus of the UN Human Rights Committee no. 1296/2004 of July 27, 2007;
- Implement the recommendations of the UN Human Rights Committee and other UN treaty bodies as well as those of the UN Human Rights Council's special procedures;
- Guarantee the independence of the judiciary, i.e. by establishing proper rules regarding the process of appointment, promotion and dismissal of judges;
- Issue a standing invitation to UN special procedures and reply positively in particular to the request to visit by the then Special Representative of the UN Secretary General on the situation of human rights defenders in 2003;
- Cooperate fully with the OSCE mechanisms on Human Dimension, notably the Office of Democratic Institutions and Human Rights and with the OSCE office in Minsk;
- Conform with the OSCE Human Dimension commitments in particular in the field of rule of law, civil and political rights and civil society;

2 — To the European Union

- Address the issue of the independence of the judiciary and freedom of association in the framework of dialogues at various levels with the authorities of Belarus and especially on the occasion of EU troпka meetings with the Belarusian authorities;
- Address the issue of human rights defenders and arbitrary restrictions to local NGO's activities and existence relying on the EU Guidelines on human rights defenders;

3 — To the OSCE

- The OSCE office in Minsk should pay special attention to the issue of human rights defenders and freedom of association;
- The OSCE Parliamentary Assembly should invite its Belarusian members to take the relevant legislative initiatives to bring domestic law into conformity with international human rights standards.

Appendix 6

P6_TA(2009)0027
EU strategy towards Belarus
European Parliament resolution of 15 January 2009 on the EU strategy towards Belarus

The European Parliament,

- having regard to its previous resolutions on the situation in Belarus, in particular that of 9 October 2008 on the situation in Belarus after the parliamentary elections of 28 September 2008[1],
- having regard to the Declaration by the Presidency on behalf of the European Union on Council Common Position 2008/844/CFSP of 10 November 2008 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus[2],
- having regard to the GAERC conclusions on Belarus of 13 October 2008 lifting the ban on political contacts with the Belarusian authorities and suspending the visa ban for six months for Belarusian officials, including President Aleksandr Lukashenko,
- having regard to the Council's Annual Report on Human Rights 2008, of 27 November 2008 (14146/2/2008),
- having regard to the Commission Communication to the European Parliament and the Council of 3 December 2008 concerning the Eastern Partnership Initiative (COM(2008)0823),
- having regard to the Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) Election Observation Mission Final Report of 27 November 2008 on the parliamentary elections in Belarus of 28 September 2008,
- having regard to Rule 103(4) of its Rules of Procedure,

[1] Texts adopted, P6_TA(2008)0470.
[2] OJ L 300, 11.11.2008, p. 56.

A. whereas the Council, in its above-mentioned conclusions of 13 October 2008, confirmed hopes of a gradual re-engagement with Belarus and its readiness to develop a dialogue with the Belarusian authorities and with other political forces in the country, with the aim of fostering genuine progress towards democracy and respect for human rights,

B. whereas, in order to foster dialogue with the Belarusian authorities and the adoption of positive measures to strengthen democracy and respect for human rights, the Council has decided that the travel restrictions imposed on certain Belarusian Government officials, with the exception of those involved in the disappearances that occurred in 1999 and 2000 and of the Chair of the Central Election Commission, will not apply for a period of six months, which may be renewed,

C. whereas, in response to the positive steps taken by Belarus, the Commission has already entered into an intensified dialogue with that country in fields such as energy, the environment, customs, transport and food safety and confirmed its readiness to further expand the scope of those technical talks, which are beneficial for both sides,

D. whereas the OSCE/ODIHR Election Observation Mission stated in its final report that, although there had been some minor improvements, the elections of 28 September 2008, which took place in a strictly controlled environment with a barely visible campaign and were marked by a lack of transparency in vote counting and in aggregating results from various polling stations, ultimately fell short of internationally recognised democratic standards; whereas Lidziya Yarmoshyna, Chair of the Central Election Commission, admitted that the September 2008 elections did not receive 'full and unconditional recognition as complying with international standards from European partners' and therefore the 'utmost goal' of the elections had not been met,

E. whereas the Commission has launched the 'Eastern Partnership Initiative' to step up cooperation with a number of Eastern European countries, including Belarus subject to fulfilment by that country of specific criteria relating to democracy, respect for human rights and the rule of law,

F. whereas the Belarusian Minister for Foreign Affairs, Syarhei Martynau, has declared that 'Belarus has a positive view on participation in the Eastern Partnership Initiative' and added that Belarus intends to participate in this initiative,

G. whereas the Belarusian authorities have imposed a one-year 'restricted freedom' sentence on opposition activist Alyaksandr Barazenka in response to his role in a demonstration held in January 2008,

H. whereas the Belarusian authorities deny a growing number of Protestant and Roman Catholic priests and nuns the right to practise a preaching and teaching ministry,

1. Welcomes the decision by the Belarusian authorities to register the 'For Freedom' movement headed by former Belarusian presidential candidate Alexander Milinkevich; hopes that the Belarusian Government will improve conditions governing the registration and work of other non-governmental groups, including political parties and the 'Nasha Viasna' human rights organisation;

2. Welcomes the decision by the Belarusian authorities to allow the printing and distribution of the two independent newspapers, *Narodnaia Volia* and *Nasha Niva*; points out, **at the same time, that there are still 13 independent newspapers awaiting registration;** welcomes the decision by the Belarusian Government to discuss the international Internet media standards *and to consult the Belarusian Association of Journalists on these issues; hopes* that suitable conditions will also be created for the work of other independent media in Belarus, including possibilities for advertising;

3. Notes Belarus' readiness to discuss in detail the OSCE/ODIHR recommendations regarding improvements to the electoral law; considers this an important and encouraging step on the part of Belarus and looks forward to its swift implementation and to further steps in line with the EU's expectations;

4. Welcomes the release of political prisoners in Belarus, but deplores the fact that Alyaksandr Kazulin, Sergei Parsyukevich and Andrei Kim do not enjoy all the rights guaranteed to Belarusian citizens by the Constitution of the Republic of Belarus and, as in the case of Alyaksandr Barazenka, who was held in custody for weeks awaiting trial for his participation in a January 2008 demonstration, also criticises the fact that some other activists remain subject to various forms of restrictions on their freedom;

5. Welcomes the Belarusian authorities' decision to temporarily lift the travel ban on a number of victims of the Chernobyl disaster, in order to allow them to participate in **rest and recuperation programmes and** hopes that in the longer term a structural solution can be found; **urges the Czech Presidency to make it a priority to negotiate an EU-wide agreement with the Belarusian authorities allowing children to travel from Belarus to any EU Member State organising such recuperation programmes;**

6. Points out that in order to significantly improve relations with the EU, Belarus should (1) remain a country without political prisoners, (2) guarantee freedom of expression for the media, (3) continue to cooperate with the OSCE on reform of the electoral law, (4) improve conditions for the work of non-governmental organisations (NGOs) and (5) guarantee freedom of assembly and political association;

7. Urges the Belarusian Government to respect human rights by:

(a) making vitally needed changes to the Belarus Criminal Code by abolishing Articles 367, 368, 369-1 and, in particular, Article 193, which are often misused as a means of repression;

(b) refraining from threatening criminal prosecution, including for avoiding military service in Belarus, against students expelled from universities for their civic stance and thereby obliged to continue their studies abroad;

(c) eliminating all obstacles to the proper registration of NGOs in Belarus; abolishing the ban on the use of private apartments as the address for registration of non-profit associations; and reconsidering Presidential Decree No 533 of 23 October 2007 regulating the use of office facilities by NGOs and political parties;

(d) improving the treatment of and respect for national minorities, including recognition of the legitimately elected body of the Union of Poles in Belarus, led by Angelika Borys, culture, churches, the education system and the historical and material heritage,

in order to end the country's self-imposed isolation from the rest of Europe and in order for relations between the EU and Belarus to improve significantly;

8. Stresses that the democratic opposition must be part of the process of gradual re-engagement with Belarus;

9. Calls on the Council and Commission to take further steps to liberalise visa procedures for Belarusian citizens, as such action is crucial to fulfilling the main goal of EU policy towards Belarus, namely intensifying people-to-people contacts that in turn facilitate the democratisation of the country; urges them, in this context, to consider the scope for reducing the cost of visas for Belarusian citizens entering the Schengen Area and simplifying the procedure for obtaining them;

10. Calls on the Council and Commission to consider applying the European Neighbourhood and Partnership Instrument[3] and the European Instrument for Human Rights and Democracy[4] to Belarus selectively by extending more support to Belarusian civil society, to urge the Belarusian Government, as a sign of goodwill and positive change, to enable the Belarusian 'European Humanities University' in exile in Vilnius (Lithuania) to return legally to Belarus and re-establish itself under suitable conditions for its future development in Minsk, to grant financial support to the independent Belarusian television channel Belsat and to urge the Belarusian Government to officially register Belsat in Belarus;

11. Calls on the Council and Commission, in this context, to consider measures to improve the business climate, trade, investment, energy and transport infrastructure and cross-border cooperation between the EU and Belarus, so as to contribute to the well-being and prosperity of the citizens of Belarus and enhance their ability to communicate with and freely travel to the EU;

12. Calls on the Council and Commission to consider the participation of the European Investment Bank in investing in Belarusian energy transit infrastructure; stresses the importance of participation by European companies in the privatisation process in Belarus;

13. Calls on the Belarusian authorities to strictly observe international safety standards and requirements during the process of building a new nuclear power plant; calls on Belarus to ratify the International Atomic Energy Agency (IAEA) Additional Protocol to the Comprehensive Safeguards Agreement; calls on the Commission to monitor and to report to it and the Member States on compliance by Belarus with the IAEA recommendations and the requirements of the Convention on Nuclear Safety and the Nuclear Non-Proliferation Treaty and on the effects the operation of the nuclear power plant could have on neighbouring EU Member States;

14. Deplores the repeated decisions by the Belarusian authorities over the last couple of years to refuse entrance visas to Members of the European Parliament and national parliamentarians; calls on the Belarusian authorities not to create any further obstacles which serve to prevent its Delegation for relations with Belarus from visiting the country;

15. Welcomes the approach taken so far by the Belarusian authorities, despite enormous pressure, not to recognise the unilateral declarations of independence issued by South Ossetia and Abkhazia;

16. Condemns the fact that, contrary to UN values, Belarus is the only country in Europe which still has the death penalty;

17. Calls on the Belarusian authorities to respect freedom of religion; condemns the fact that European citizens, including priests, are being repeatedly expelled from Belarus, which is contrary to the confidence-building process with the EU;

18. Instructs its President to forward this resolution to the Council, the Commission, the parliaments and governments of the Member States, the Secretary-General of the United Nations, the Parliamentary Assemblies of the OSCE and the Council of Europe, the Secretariat of the Commonwealth of Independent States and the Parliament and Government of Belarus.

[3] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 310, 9.11.2006, p. 1).

[4] Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (OJ L 386, 29.12.2006, p. 1).

Appendix 7

P6_TA(2009)0212
Bi-annual evaluation of the EU Belarus dialogue
European Parliament resolution of 2 April 2009
on bi-annual evaluation of the EU-Belarus dialogue

The European Parliament,

- having regard to its previous resolutions on the situation in Belarus, in particular that of 15 January 2009 on the EU strategy toward Belarus[5],
- having regard to the conclusions on Belarus of the General Affairs and External Relations Council of 16 March 2009 further suspending the visa-ban sanctions for Belarusian officials, including President Aleksandr Lukashenko and extending the restrictive measures,
- having regard to the Commission Communication of 3 December 2008 concerning the Eastern Partnership Initiative (COM(2008)0823),
- having regard to the Commission statement of 21 November 2006 on the European Union's readiness to renew its relationship with Belarus and its people within the framework of the European Neighbourhood Policy (ENP),
- having regard to Rule 103(2) of its Rules of Procedure,

A. whereas the Council, in its above-mentioned conclusions of 16 March 2009, confirmed its readiness to deepen its relations with Belarus subject to progress made by Belarus on the path towards democracy, human rights and the rule of law and to assist Belarus in attaining those objectives,

B. whereas the Council, after evaluating developments in Belarus following the decision taken in October 2008 on the temporary suspension of the travel restrictions imposed on certain officials of Belarus, in accordance with the terms set out in Council Common Position 2008/844/CFSP[6], has decided to maintain the suspension of the application of those travel restrictions for a nine-month period,

C. whereas the Council decided to extend for one year the restrictive measures against certain Belarusian officials provided for by Common Position 2006/276/CFSP,

D. whereas the EU continues to be concerned about the human rights situation in Belarus and the recent cases of violations in this area,

E. whereas, in response to the positive steps taken by Belarus, the Commission has already entered into an intensified dialogue with that country in fields such as energy, the environment, customs, transport and food safety and has confirmed its readiness to further expand the scope of those technical talks, which are beneficial for both sides, on the basis that any plans for the construction at the border with the EU of a new nuclear power station to be built on non-Western lines should not be included in those talks,

F. whereas the Council included Belarus in its 'Eastern Partnership Initiative', which the Commission launched in its above-mentioned communication of 3 December 2008 with a view to stepping up cooperation with a number of Eastern European countries,

G. whereas the Belarusian Minister for Foreign Affairs, Syarhei Martynau, has declared that 'Belarus has a positive view on participation in the Eastern Partnership Initiative', adding that Belarus intends to participate in that initiative,

H. whereas the Committee to Protect Journalists has called on the Belarusian authorities to renew the accreditation of Andrzej Poczobut, a local correspondent for Poland's largest daily, Gazeta Wyborcza and to investigate recent harassment of him and his family in the western Belarusian city of Hrodna, due to his criticism of the policies of the government; whereas on 17 March 2009 Andrzej Poczobut was fined 148 EUR for reporting on the meeting of the Union of Poles in Belarus,

1. Supports the decision of the Council to extend for one year the restrictive measures against certain Belarusian officials and at the same time to maintain the suspension of the application of travel restrictions imposed on certain officials of Belarus for a nine-month period;

---

[5] P6_TA(2009)0027.

[6] Council Common Position 2008/844/CFSP of 10 November 2008 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus (OJ L 300, 11.11.2008, p. 56).

2. Continues to be concerned about the human rights situation in Belarus and the recent cases of violations in this area; looks forward to the launching of a human rights dialogue with Belarus in the near future;

3. Welcomes the increased high-level EU-Belarus dialogue, including bilateral contacts and the intensified technical cooperation initiated by the Commission, as a way of building mutual understanding and providing an opportunity to address the parties' concerns and issues of common interest;

4. Believes that intensification of the political dialogue between the EU and Belarus must be conditional on the lifting of restrictions on freedom and cessation of violence against participants in opposition protests and human rights activists; calls, in this context, for the immediate release of entrepreneurs Mikalai Autukhovich, Yury Liavonau and Uladzimir Asipenka and youth opposition activist Artsiom Dubski; as well as a review of the «restricted freedom» sentences imposed on 11 persons who participated in a demonstration which took place in January 2008;

5. Welcomes and further encourages the continuation of Belarus's cooperation with the Office for Democratic Institutions and Human Rights at the Organization for Security and Co-operation in Europe (OSCE/ODIHR) on electoral legislation;

6. Insists that the Belarusian democratic opposition and civil society must be included in the dialogue between the EU and Belarus;

7. Calls on the Government of Belarus to use the next nine months to demonstrate substantial progress in the following areas:

– reform of Belarus's electoral legislation to provide guaranteed representation of opposition members on election commissions at all levels and to ensure the transparency and accountability of the vote count;
– providing equal rights to all media outlets by lifting a ban on dissemination of independent print media through state-owned distribution networks of 'Sayuzdruk' (system of kiosks) and the Belarusian state postal service 'Belposhta'; repealing Articles 367, 368, 369 and 369-1 of the Belarus Criminal Code, which are often misused to persecute journalists for their professional activity; simplifying the procedure for obtaining accreditation for all journalists, including official representatives of foreign media outlets;
– guaranteeing freedom of association and assembly by repealing Article 193-1 of the Belarus Criminal Code providing for criminal responsibility for activity on behalf of unregistered public associations, political parties and foundations; safeguarding freedom of religion;
– guaranteeing political rights and freedoms by discontinuing the practice of politically motivated dismissals from jobs and universities; stopping persecution for avoiding military service of students expelled from universities for their civic stance; reviewing the recent cases of the forcible army conscription of several young activists, such as Franak Viaиorka, Ivan ЉЪyla and Zmiter Fedaruk, which is tantamount to state-practised hostage taking;

8. Calls on the Government of Belarus to immediately establish a moratorium on all death sentences and executions with a view to abolishing the death penalty (as provided for by UN General Assembly Resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty), commute without delay the sentences of all prisoners currently on death row to terms of imprisonment, bring domestic legislation into line with the country's obligations under international human rights treaties and ensure that the internationally recognised standards for fair trials are rigorously respected;

9. Calls on the Belarusian authorities to recognise the Union of Poles in Belarus led by Angelika Borys, who was re-elected as its Chair at the Congress of the Union of Poles on 15 March 2009;

10. Calls on the Council and the Commission, should Belarus fulfil the above-mentioned criteria during the period of nine months, to consider lifting the travel ban on a permanent basis, as well as taking measures to facilitate economic and social progress and speeding up the process of Belarus's reintegration into the European family of democratic nations;

11. Calls on the Council and the Commission to take further steps to liberalise visa procedures for Belarusian citizens, as such action is crucial to fulfilling the main goal of EU policy towards Belarus, namely making Belarus part of European and regional processes and rendering the democratisation process in the country irreversible; urges the Council and the Commission, in this context, to consider the scope for reducing the cost of visas for Belarusian citizens entering the Schengen Area and simplifying the procedure for obtaining visas;

12. Calls on the Commission to make full and effective use of the possibilities to support civil society and democratic developments in Belarus via the European Instrument for Democracy and Human

Rights[7] (EIDHR); urges the Commission to regularly and fully inform Parliament how the funding from the EIDHR is spent;

13. Calls on the Commission to grant financial support to the independent Belarusian television channel Belsat and to urge the Belarusian Government to officially register Belsat in Belarus; calls on the Belarusian Government, as a sign of goodwill and positive change, to enable the Belarusian 'European Humanities University' (EHU) in exile in Vilnius (Lithuania) to return legally to Belarus on the basis of genuine guarantees that it will be able to operate freely and re-establish itself under suitable conditions for its future development in Minsk, in particular by allowing the EHU to re-establish its library in Minsk during the course of 2009 by providing the premises and creating the conditions to allow the extensive collections in Belarusian, Russian, English, German and French to be open and accessible to all;

14. Calls on the Council and the Commission to consider measures to improve the business climate, trade, investment, energy and transport infrastructure and cross-border cooperation between the EU and Belarus, so as to contribute to the well-being and prosperity of the citizens of Belarus and enhance their ability to communicate with and freely travel to, the EU;

15. Instructs its President to forward this resolution to the Council, the Commission, the parliaments and governments of the Member States, the Secretary-General of the United Nations, the Parliamentary Assemblies of the OSCE and the Council of Europe, the Secretariat of the Commonwealth of Independent States and the Parliament and Government of Belarus.

Appendix 8

P7_TA(2009)0117 European Parliament resolution of 17 December 2009 on Belarus

The European Parliament,

– having regard to its previous resolutions on the situation in Belarus, in particular that of 2 April 2009 on bi-annual evaluation of the EU-Belarus dialogue(1) ,
– having regard to the conclusions on Belarus reached by the General Affairs and External Relations Council at its meeting of 17 November 2009, involving a further suspension of the application of the visa ban on certain Belarusian officials, including President Aleksandr Lukashenko and the extension of the restrictive measures until October 2010,
– having regard to the Commission Communication of 3 December 2008 concerning the Eastern Partnership (COM(2008)0823),
– having regard to the Declaration on the Eastern Partnership issued by the European Council at its meeting of 19-20 March 2009 and to the Joint Declaration issued at the Prague Eastern Partnership Summit of 7 May 2009,
– having regard to the Commission statement of 21 November 2006 on the European Union's readiness to renew its relationship with Belarus and its people within the framework of the European Neighbourhood Policy (ENP),
– having regard to the EU Presidency statement in the Organisation for Security and Co-operation in Europe (OSCE) on the death penalty in Belarus of 29 October 2009,
– having regard to Rule 110(4) of its Rules of Procedure,

A. whereas the Council in its above mentioned conclusions of 17 November 2009 recognises that new possibilities have opened up for dialogue and deepened cooperation between the European Union and Belarus with the aim of fostering genuine progress towards democra-

cy and respect for human rights and reaffirms its readiness to deepen the European Union's relations with Belarus, subject to further progress towards democracy, human rights and the rule of law and to assist the country in attaining these objectives,

B. whereas the European Union sees Belarus as a partner on issues ranging from energy security, to transport, cultural cooperation, the environment and food safety,

C. whereas the Council, after evaluating developments in Belarus following the decision taken on 16 March 2009 in accordance with the terms set out in its Common Position 2009/314/CFSP, has decided to extend the restrictive measures against certain Belarusian officials but to suspend the application of the restrictions on travelling to the EU, both until October 2010,

D. whereas some positive steps, such as the release of a number of political prisoners and the authorisation to distribute two independent newspapers, have been taken since October 2008,

E. whereas, in response to the positive steps taken by Belarus, the Commission has already entered into an intensified dialogue with that country in fields such as energy, the environment, customs, transport and food safety,

F. whereas the Council included Belarus in its decision of 20 March 2009 on the Eastern Partnership Initiative, which the Commission launched in its above-mentioned communication of 3 December 2008 with a view to stepping up cooperation with a number of eastern European countries; whereas one of the objectives of Belarus's participation in the Eastern Partnership Initiative and its parliamentary branch Euronest is to intensify cooperation between the country and the EU, including its people-to-people dimension,

G. whereas the International Federation of Journalists, on the basis of the report of its fact-finding mission to Minsk of 20-24 September 2009, carried out in collaboration with several international non-governmental organisations (NGOs), has not identified any significant progress in the area of media freedom in Belarus,

H. whereas Belarus has committed itself to consider the recommendations made by the OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) regarding improvements to its electoral law in order to bring it into line with international standards for democratic elections and to consult about the proposed amendments with the OSCE; whereas the National Assembly of Belarus has recently passed a reform of the Electoral Code without prior consultation of the OSCE,

I. whereas Belarus remains the sole European country still using the death penalty; whereas further death sentences have been pronounced in recent months,

J. whereas on 2 November 2009 the Belarusian President Aleksandr Lukashenko stated that 'relations with the European Union as a powerful consolidated partner are one of the fundamental factors in securing Belarus's independence and sovereignty, as well as economic, scientific and technological development',

1. Supports the Council's decision to extend the restrictive measures against certain Belarusian officials but at the same time to further suspend the application of the travel restrictions until October 2010;

2. Stresses that the increased political dialogue and the establishment of the Human Rights Dialogue between the European Union and Belarus must lead to concrete results and substantial progress in the fields of democratic reforms and respect for human rights and the rule of law;

3. Welcomes the constructive and active participation of Belarus in the Eastern Partnership, an initiative aimed at strengthening democracy and the rule of law and promoting European cooperation; regards Belarus's participation in the Eastern Partnership as a way forward to promote further dialogue with the European Union and deeper rapprochement based on a readiness and commitment on the part of Belarus to attain these objectives; welcomes trilateral cooperation between Lithuania, Belarus and Ukraine in the framework of the Eastern Partnership, with priority given to projects on integrated border management, transport and transit, the common cultural and historical heritage, social security and energy security;

4. Calls on the Commission to draft a proposal on a joint interim plan for Belarus setting priorities for reforms inspired by the action plans developed in the framework of the ENP in order to revitalise the suspended ratification procedure for the EU-Belarus Partnership and Cooperation Agreement; takes the view, in this respect, that the Partnership and Cooperation Agreement between the EU and Belarus, which has been frozen since 1997, should be reactivated once all the political reforms have been completed and implemented;

5. Calls on the European Investment Bank and the European Bank for Reconstruction and Development to consider increasing their financial assistance to Belarus, paying special attention to the situation of small and medium-sized enterprises, while reviewing their mandate in order to encourage the transition of Belarus towards democracy, a pluralistic society and a market economy; believes that this possible

financial support should be made contingent on the achievement of substantial progress in the areas outlined below;

6. Calls on the Commission to consider measures to improve the business climate, trade, investment, energy and transport infrastructure and cross-border cooperation between the European Union and Belarus; takes note of the efforts and achievements of Belarus in countering the effects of the financial and economic crisis and boosting the economy by easing investment barriers and reforming property rights and the private sector;

7. Stresses that the efforts made to tackle corruption, increase transparency and strengthen the rule of law, which are fundamental to attracting more foreign investment, have not been sufficient;

8. Calls on the Commission to prepare recommendations for the possible adoption of directives on visa facilitation and readmission agreements with Belarus once the relevant conditions have been met; believes that such action is crucial to achieving the main goals of EU policy towards Belarus, namely enhancing people-to-people contact, making Belarus part of European and regional processes and rendering the democratisation process in the country irreversible;

9. Urges the Council and the Commission, in this context, to consider the scope for reducing the cost of visas for Belarusian citizens entering the Schengen Area and simplifying the procedure for obtaining visas; underlines that the long-term objective is visa-free travel between the European Union and Belarus; urges the Belarusian authorities to sign the visa-free travel agreement for border zone inhabitants with neighbouring EU countries;

10. Strongly condemns the recent denials of entry visas to Agnieszka Romaszewska, a director of TV Belsat, professors from Bialystok University, Christos Pourgourides, a Member of the Cyprus Parliament and Emanuelis Zingeris, a Member of the Lithuanian Parliament;

11. Calls on the Council and the Commission, should Belarus make significant progress during the next year and fulfil the relevant criteria, to consider lifting the travel ban on a permanent basis, as well as taking measures to facilitate economic and social progress and speeding up the process of Belarus's integration into the European family of democratic nations;

12. Notes that new impetus should be given to mutually fruitful dialogue between Belarus and the European Union through interparliamentary cooperation within Euronest; notes that Belarus will be invited to participate fully and on an equal basis in the Euronest Assembly — the parliamentary dimension of the Eastern Partnership — as soon as free and fair elections to the Belarusian Parliament take place and considers that until then interim provisions should be applied;

13. Is of the opinion that all EU Member States and their governments should pursue a coherent stance in their relations with third countries based on the Common Positions agreed in the Council; also considers that the European institutions should follow a joint strategy and combine efforts in pursuing concrete results in the EU's relations with Belarus; calls on all representatives of the European Union and Member States to hold political meetings with representatives of the democratic opposition, particularly when visiting Belarus;

14. Urges Belarus to continue to cooperate with the Office for Democratic Institutions and Human Rights at the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) on the electoral code and expects the new Electoral Law to be in line with international standards and to enter into the force before the local elections planned for spring 2010;

15. Insists that clear and significant progress towards democratisation is expected within the next year in order for the sanctions to be completely lifted and that the conditions for full re-engagement with Belarus should be:

– ensuring respect for freedom of expression by bringing the Media Law into line with the recommendations contained in the report of the International Fact-Finding Mission to the Republic of Belarus of 20-24 September 2009;
– guaranteeing freedom of association and assembly by repealing Article 193-1 of the Belarus Criminal Code, which makes activity on behalf of unregistered public associations, political parties and foundations a criminal offence;
– allowing the registration of all political parties and civil society organisations;
– safeguarding freedom of religion for religious denominations other than the Orthodox Church, in particular to let New Life Church operate freely;
– to avoid hampering the activities of organisations already operating in Belarus, for example by raising rents (as was the case regarding the Belarusian Popular Front) or imposing illegal taxes on projects carried out using EU grants (for example, the Belarusian Helsinki Committee);

- creating favourable conditions for the operation of NGOs and independent media;
- guaranteeing political rights and freedoms by discontinuing the practice of politically motivated acts of intimidation, in particular dismissals from jobs and universities (as was the case regarding Tatsyana Shaputska, expelled from her university for participation in an Eastern Partnership civil society forum in Brussels);
- stopping prosecutions, for allegedly avoiding military service, of students who have been expelled from universities for their civic stance and are being forced to obtain their education abroad;
- reviewing all the cases of forcible conscription which have violated the legal rights of several young activists, such as Franak Viаиorka, Ivan Льyla and Zmiter Fedaruk and which are tantamount to State-practised hostage-taking;

16. Notes with regret that, after initial positive steps undertaken by the Belarus Government, no further essential progress has been made in the field of human rights and fundamental freedoms; recalls in this respect the continued repression of political opponents and the refusal to register political parties (Belarusian Christian Democracy), NGOs (‘Viasna’) and independent media (TV Belsat); calls on the Belarusian authorities to review the sentences involving restrictions on their freedom imposed on the participants in a peaceful demonstration held in January 2008 and the imprisonment of Artsyom Dubski; points out that Amnesty International regards all these persons as prisoners of conscience; calls for the immediate release of the entrepreneurs Mikalai Awtukhovich and Uladzimir Asipenka, who have been held in pre-trial detention for eight months;

17. Calls on the Government of Belarus immediately to establish a moratorium on all death sentences and executions with a view to abolishing the death penalty (as provided for by UN General Assembly Resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty), to commute without delay the sentences of all prisoners currently on death row to terms of imprisonment, to bring domestic legislation into line with the country’s obligations under international human rights treaties and to ensure that the internationally recognised standards for fair trials are rigorously respected;

18. Urges the Belarusian authorities to initiate unbiased and transparent investigations into the kidnappings of young activists (Artur Finkevic, kidnapped on 17 October 2009, Nasta Palazhanka and

Dzianis Karnou, both on 5 December 2009, Uladzimir Lemesh, on 27 November 2009, Zmitser Dashkevich, on 5 December 2009 and Yauhen Afnahel on 6 December 2009) and the recent death of Valiantsin Dounar, a Belarusian Popular Front member and activist and to publish the results of the investigations;

19. Calls on the Belarusian authorities to respect the rights of national minorities in accordance with the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995; in that connection, urges the Belarusian authorities to recognise the Union of Poles in Belarus led by Angelika Borys, who was re-elected as its chairwoman at the Congress of the Union of Poles on 15 March 2009;

20. Urges the Belarusian authorities to develop genuine dialogue with representatives of the democratic opposition; emphasises, therefore, the importance of defining the role and working methods of the Public Advisory Council;

21. Calls on the Commission to make full and effective use of the possibilities to support civil society and democratic developments in Belarus via the European Instrument for Democracy and Human Rights and stresses at the same time that support for democratic opposition must be an integral part of the gradual re-engagement process with Belarus;

22. Calls on the Commission and the governments of the Member States to grant financial support to TV Belsat and to urge the Belarusian Government officially to register Belsat in Belarus; calls on the Belarusian Government, as a sign of goodwill and positive change, to enable the Belarusian European Humanities University (EHU) in exile in Vilnius (Lithuania) to return legally to Belarus on the basis of genuine guarantees that it will be able to operate freely and re-establish itself under suitable conditions for its future development in Minsk, in particular by allowing it to re-establish its library in Minsk by providing the premises and creating the conditions which will enable it to make the extensive collections in Belarusian, Russian, English, German and French open and accessible to all;

23. Instructs its President to forward this resolution to the Council, the Commission, the parliaments and governments of the Member States, the Secretary-General of the United Nations, the Parliamentary Assemblies of the OSCE and the Council of Europe, the Secretariat of the Commonwealth of Independent States and the Parliament and Government of Belarus.

Appendix 9

Parliamentary Assembly of Council of Europe
Resolution 1671 (2009)[1]
Situation in Belarus

1. The situation in Belarus has been the focus of close attention by the Parliamentary Assembly since 1992, when the Belarusian parliament was granted special guest status. Belarus' lack of progress in the field of democracy, human rights and the rule of law, however, led to the suspension of this status in 1997 and to the freezing of Belarus' membership application to the Council of Europe the following year. The Assembly continues to look forward to the time when Belarus meets the conditions to be a member of the Council of Europe and its authorities undertake a firm commitment to live up to the standards of the Organisation and embrace its values.

2. In recent months, important developments have taken place in Belarus: between January and August 2008, nine opposition figures considered as political prisoners were released, including former presidential candidate Alexander Kozulin. As a result, since then, in Belarus, there have been no internationally recognised political prisoners. The Assembly welcomes this tangible progress and calls for it to be made irreversible.

3. The Assembly also welcomes the registration of the opposition movement "For Freedom!", as well as the possibility for three independent publications - Narodnaya Volya, Nashe Niva and Uzgorak - to be published in Belarus and their inclusion in the state distribution network. However, media freedom is far from respected in Belarus, especially with regard to broadcasting.

4. It also considers as a positive development the setting up of a number of consultative councils, under the aegis of the presidential

[1] Assembly debate on 23 June 2009 (20th Sitting) (see Doc. 11939, report of the Political Affairs Committee, rapporteur: Mr Rigoni; and Doc. 11960, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 23 June 2009 (20th Sitting). See also Recommendation 1874 (2009).

administration and other state bodies, as fora where the authorities can engage in constructive dialogue with representatives of non-governmental organisations and civil society. The Assembly hopes that the outcome of the discussions taking place in the consultative councils will lead to legislative and policy measures.

5. Concerning the disappearance of four political opponents in 1999 and 2000, the Assembly notes with satisfaction that none of the senior officials named, in Resolution 1371 (2004) on disappeared persons in Belarus, as being strongly suspected of involvement either in the disappearances themselves or in their cover-up still occupies a position of responsibility. It strongly regrets, however, that the investigations into these crimes have still not been allowed to progress any further, despite the elements provided in the Assembly's report.

6. What adds to the importance of these developments is that they respond to precise demands coming from European organisations and that they have been undertaken in the context of the resumption of political dialogue with the Belarusian leadership.

7. In effect, following the release of all political prisoners in Belarus, in October 2008 the European Union took the decision to resume contacts with the Belarusian leadership at the highest level and to suspend, even if partially and temporarily, the visa ban against a number of high-ranking Belarusian officials, including President Lukashenko. This suspension was extended for an additional nine months in April 2009. The willingness of the European Union to normalise relations with Belarus was epitomised by the visit of the European Union High Representative for Common Foreign and Security Policy, Mr Javier Solana, to Minsk and his meeting with President Lukashenko on 19 February 2009.

8. Belarus is also one of the six countries that will participate in the Eastern Partnership, a new instrument designed to strengthen political and economic co-operation between the European Union and its eastern European and Caucasian neighbours, with a view to enhancing their stability and supporting democratic and market-oriented reforms. The level of Belarus' participation will depend on the overall development of its relations with the European Union. In this context, Belarus attended the Eastern Partnership summit in Prague on 7 May 2009. The European Union also intends to establish a human rights dialogue with Belarus.

9. The Council of Europe, for its part, has recently intensified its contacts with the Belarusian authorities: following a visit by a delegation of the Assembly's Political Affairs Committee in February 2009,

Minister Miguel Angel Moratinos conducted an official visit to Minsk, in March 2009, in his capacity as Chair of the Committee of Ministers. A few weeks earlier, the Belarusian authorities had finally given their consent to the opening of an Infopoint on the Council of Europe in Minsk, an idea initiated by the Assembly itself and developed by the Slovak Chairmanship of the Committee of Ministers. The opening ceremony of the Infopoint took place in June 2009.

10. Furthermore, in December 2008, the Congress of Local and Regional Authorities of the Council of Europe decided to grant observer status to the Council for Co-operation of Local Self-Government Bodies of the Council of the Republic of the National Assembly of the Republic of Belarus.

11. Despite recent positive developments, however and the resumption of contacts with European organisations, the situation in Belarus continues to be a cause for concern.

12. Firstly, the parliamentary elections of September 2008 were a missed opportunity for a decisive change towards democracy, as they failed to meet European standards of freedom and fairness. As highlighted by the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), serious shortcomings affected all stages of the electoral process, from the availability of pluralist information for voters to the lack of transparency of the vote count. These shortcomings inevitably cast a doubt over the representativeness of the present parliament, where no opposition candidate managed to gain a seat. It is, however, to be welcomed that, following the final OSCE/ODIHR assessment, the Belarusian authorities agreed to work with that organisation on the reform of the country's electoral legal framework and practice, in order to align them with Belarus' OSCE commitments.

13. As regards respect for political freedoms, harassment and intimidation of opposition activists, in particular young people, continue to take place through various means, such as unwarranted searches of private houses, unlawful requisition of equipment, militia brutality during demonstrations and forced conscription into the military service despite previous declarations of being unfit for service. In addition, a number of political activists are under house arrest and the criminal records of those political prisoners who were released have not been erased, with the result that they face limitations in the exercise of some rights, including the right to run for elections.

14. The Assembly also takes note of the fact that, as of today, three entrepreneurs, who are currently in detention, as well as other persons who are subject to limitations of personal liberty, are considered by the Belarusian opposition as political prisoners or, at least, as victims of an abuse of the criminal justice system for political reasons. The Assembly calls for an independent investigation to be conducted into these cases, in order to clarify whether they are political prisoners and, if so, to secure their release.

15. The situation regarding freedom of association also gives rise to concerns: even if the political opposition movement "For Freedom!" was finally registered in December 2008, other opposition and human rights organisations continue to face obstacles in obtaining registration by the Ministry of Justice, the latest example being the human rights organisation "Nasha Viasna" and its members risk prosecution for membership in a non-registered organisation under Article 193.1 of the Criminal Code.

16. The Assembly regrets that, despite the inclusion of three independent publications in the state distribution network, the other independent publications cannot benefit from this scheme and cannot even be printed in Belarus. Absolute governmental control over the printing and the distribution of the press as well as over broadcasting is a flagrant violation of media freedom. Similarly, the Assembly expresses concern at the difficulties encountered by foreign journalists in obtaining press accreditation and by foreign media, such as the satellite channel Belsat, in obtaining registration by the Ministry of Foreign Affairs. It takes note, however, of the numerous statements emanating from the Belarusian leadership on their willingness to ensure that the new media law is not implemented in such a way as to restrict freedom of expression. The Assembly wishes that the same could be said for the implementation of the Law on Counteraction against Extremism, which has recently led to the suspension of the publication of the magazine Arche, later withdrawn following international pressure.

17. It also regrets that capital executions can still be carried out in Belarus, despite the reduction of the categories of crimes for which they can be inflicted, a decrease in the number of death sentences handed down in such cases and the fact that no executions have been carried out since October 2008 according to official statements. The Assembly recalls that, in the current constitution, the presence of a provision on the death penalty is considered as a transitional measure and that no

legal impediment prevents either the president or the parliament from introducing a moratorium on executions. While no public statistics are available, the Assembly also takes note of the information provided by the authorities that currently there are no capital sentences whose execution is pending.

18. Considering that, although Belarus is far from Council of Europe standards in the field of democracy, the rule of law and human rights, its authorities have recently taken important steps in the right direction; the Assembly thus resolves to encourage the continuation of this process by engaging in a political dialogue with the authorities, while at the same time continuing to support the strengthening of democratic forces and civil society in the country.

19. In the light of the above, the Assembly calls on its Bureau to:

19.1. lift the suspension of special guest status for the Parliament of Belarus after a moratorium on the execution of the death penalty is decreed by the competent Belarusian authorities;

19.2. also taking into account the opinion of the Political Affairs Committee, follow the situation in Belarus and, within one year, or sooner if the situation so requires, evaluate whether this country has made substantive and irreversible progress towards Council of Europe standards. In this context, special attention should be given to the extent to which Belarus will have complied with the recommendations made under paragraphs 21 and 22 of the present resolution and to the co-operative attitude shown by the authorities in their relations with the Council of Europe;

19.3. in the context of the restoration of special guest status for the Belarusian Parliament and until the opposition is adequately represented therein, ensure that a delegation of the Belarusian extraparliamentary opposition is invited to participate in the work of the Assembly and its committees, according to modalities which will be established by the Bureau itself;

19.4. invite the Political Affairs Committee to continue to follow the situation in Belarus, also relying on the activities carried out by its Sub-Committee on Belarus and report back to the Assembly when necessary.

20. Furthermore, the Assembly calls on the Secretary General of the Council of Europe to appoint a panel of independent experts to investigate the new cases of alleged political prisoners in Belarus and those which might arise.

21. Being convinced that dialogue can be sustained only through Belarus' continuous progress towards Council of Europe standards, the Assembly calls on the Belarusian authorities to:

21.1. ensure the immediate release of all political prisoners (as would be determined by the process established by paragraph 20, above) and that there will be no setback on this important issue;

21.2. immediately and unconditionally lift the restrictions imposed on 11 young people sentenced to terms of restricted freedom for their participation in a peaceful demonstration in January 2008;

21.3. co-operate with the Council of Europe in order to ascertain whether the allegations that there are still a number of political prisoners in Belarus are well founded;

21.4. erase the criminal record of former political prisoners, to enable them fully to exercise their civil and political rights;

21.5. refrain from the harassment and intimidation of opposition activists;

21.6. discontinue the practice of forced conscription of opposition activists into the military service despite previous declarations of being unfit for service;

21.7. ensure the respect of freedom of association, in particular by:

21.7.1. removing all undue practical and legal obstacles to the registration of political parties, groups and human rights associations and introducing the possibility for them to have their legal premises in residential buildings;

21.7.2. allowing the registration of the human rights organisation "Nasha Viasna";

21.7.3. repealing Article 193.1 of the Criminal Code;

21.8. ensure the respect of freedom of assembly, in particular by:

21.8.1. enabling opposition organisations to hold demonstrations in places where they can be visible to the public;

21.8.2. ensuring that law-enforcement officials do not use excessive force against demonstrators;

21.9. reform electoral legislation and practice by taking into account the recommendations of the OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission), in order to align them to European standards and formally ask the Venice Commission, with which it holds associate status, to be involved in this process;

21.10. ensure freedom of the media and the provision of pluralist information, in particular by:

21.10.1. allowing independent publications to be printed in Belarus and to be distributed through the state network;

21.10.2. allowing the creation of independent printing houses and independent distributors of print media;

21.10.3. abolishing the existing direct governmental control over the state broadcaster and ensuring that the political opposition can have fair access to broadcasting, especially before elections;

21.10.4. ensuring that Internet-based media can function without administrative restrictions;

21.10.5. abolishing the overly restrictive penal laws on defamation, in particular the offence of making false negative statements about the Republic of Belarus and its state organs;

21.10.6. removing obstacles to the granting of entry visas and the accreditation of foreign journalists;

21.10.7. registering the satellite channel Belsat and other satellite channels once they apply, subject to the availability of technical resources;

21.10.8. refraining from using the Law on Counteraction against Extremism as a pretext to restrict or shut down the activities of independent media outlets;

21.10.9. ensuring the non-restrictive implementation of the new media law, especially as regards the obligation of re-registration;

21.11. ensure university autonomy and academic freedom, allow the European Humanities University to reopen in Belarus and refrain from excluding students and faculty from educational institutions in Belarus for political reasons;

21.12. ensure the registration of the East European School of Political Studies and consider participation therein by young government officials;

21.13. give their full support to the functioning of the Infopoint on the Council of Europe in Minsk and the implementation of its activities;

21.14. make full use of the Council of Europe conventions of which Belarus is a party, by participating actively and constructively in the activities stemming from them.

22. Finally, the Assembly calls on the Belarusian Parliament and other authorities to immediately declare an official moratorium on death sentences and executions with a view to abolishing the death penalty and to introducing appropriate legislation as the next step towards its complete abolition.

Contents